

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER

OCTOBER TERM, 1904.

No. 1323.

No. 1, SPECIAL CALENDAR.

THOMAS F. HOLDEN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

THOMAS F. HOLDEN, Plaintiff in Error, }
vs. } No. 1323.
 THE UNITED STATES. }

a In the Police Court of the District of Columbia, October
Term, 1902.

UNITED STATES
vs.
THOMAS F. HOLDEN. } No. 127,217. Information for Violation of
Section 901 of the Code.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 U. S., No. 126,097.

In the Police Court of the District of Columbia, August Term, A. D.
1902.

DISTRICT OF COLUMBIA, ss:

Ashley M. Gould, Esquire, attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Alexander R. Mallowny, Esquire, one of his assistants, comes here into court, at the District aforesaid, on the fourteenth day of August in the year of our Lord one thousand nine hundred and two in this said term, and for the said United States, gives the court here to understand and be informed, on the oath of one Harry R. Lohman that one Thomas F. Holden late of the District aforesaid, on the sixth day of August in the year of our Lord one thousand nine hundred and two, with force and arms, at the District aforesaid, and within the jurisdiction of this court did then and there unlawfully allow a certain waste product to wit; water mixed with gas tar of the gas works of the Washington Gas Light Company a corporation doing business in the said District at the foot of Twelfth street southeast in the city of Washington in said District to flow into and be deposited into a certain tributary of the Potomac river known by the name of the Anacostia river and also known by the name of the Eastern branch of said Potomac river

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said attorney of the United States, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the court here in the premises, and that due proceedings may be had against the said Thomas F. Holden in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

ASHLEY M. GOULD,
Attorney of the United States in and for the
District of Columbia,
 By ALEXANDER R. MULLOWNY,
His said Assistant.

Personally appeared Harry R. Lohman before me this fourteenth day of August A. D. 1902, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

ALEXANDER R. MULLOWNY,
Assistant Attorney of the United States in and
for the District of Columbia.

2

U. S., No. 127, 217.

In the Police Court of the District of Columbia, October Term, A. D.
 1902.

DISTRICT OF COLUMBIA, ss:

Ashley M. Gould, Esquire, attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Alexander R. Mullowny Esquire, one of his assistants, comes here into court, at the District aforesaid, on the twenty fourth day of October in the year of our Lord one thousand nine hundred and three in this said term, and for the said United States, gives the court here to understand and be informed, on the oath of one Harry R. Lohman that one Thomas F. Holden late of the District aforesaid, on the fifteenth day of October in the year of our Lord one thousand nine hundred and two, with force and arms, at the District aforesaid, and within the jurisdiction of this court did then and there unlawfully allow a certain waste product to wit: water mixed with tar and oil of the gas works of the Washington Gas Light Company, situated at the foot of Twelfth street south east in the city of Washington, in said District to flow into and be deposited into a certain tributary of the Potomac river within said District known by the name of the Anacostia river and also known by the name of the Eastern branch of the Potomac river, against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said attorney of the United States, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the court here in the premises, and that due proceedings may be had against the said Thomas F. Holden in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

ASHLEY M. GOULD,
Attorney of the United States in and for the
District of Columbia,
 By ALEXANDER R. MULLOWNY,
His said Assistant.

Personally appeared Harry R. Lohman before me this twenty fourth day of October A. D. 1902, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

ALEXANDER R. MULLOWNY,
Assistant Attorney of the United States in and
for the District of Columbia.

3 In the Police Court of the District of Columbia, August Term, 1902.

UNITED STATES	}	No. 126,097. Information for Violation of Section 901 of the Code.
vs. THOMAS F. HOLDEN.		

August 14, 1902, jury trial demanded.

October 25, 1902, *nolle pros.* entered by assistant district attorney with the consent of the court.

MAY 21, 1902.

Seal Police Court
 of District of Co-
 lumbia.

I hereby certify under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

JOSEPH HARPER,
Dep. Clerk Police Court, Dist. of Columbia.

4 In the Police Court of the District of Columbia, October Term, 1902.

UNITED STATES	}	No. 127,217. Information for Violation of Section 901 of the Code.
vs. THOMAS F. HOLDEN.		

Defendant arraigned: Friday October 24, 1902.

Plea: not guilty. Jury trial waived

Continued 10 / 31, 11 / 7, 14, 21, 1902, May 15, 1903.

May 15.—Judgment: guilty.

Sentence: to pay a fine of \$25.00 and in default to be imprisoned 60 days in jail.

January 31, 1903.—Prayers of defendant denied and leave given to present additional prayers.

May 15, 1903.—Bill of exception presented and signed.

May 15, 1903.—Recognizance in the sum of \$100 entered into to perform judgment subject to the action of the Court of Appeals upon writ of error. John Leetch, surety.

MAY 21, 1903.

Seal Police Court
of District of Co-
lumbia.

I hereby certify under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

JOSEPH HARPER,
Dep. Clerk Police Court, Dist. of Columbia.

5 In the Police Court of the District of Columbia.

THE UNITED STATES	}	Docket No. 127,217.
vs.		
THOMAS F. HOLDEN.		

Bill of Exceptions.

6 In the Police Court of the District of Columbia.

THE UNITED STATES	}	Docket No. 127,217.
vs.		
THOMAS F. HOLDEN.		

Be it remembered that the above entitled cause, of The United States vs. Thomas F. Holden, docket No. 127,217, came on for hearing in the police court of the District of Columbia before the Honorable Ivory G. Kimball, one of the judges thereof, on the 24th day of October, 1902 and said hearing was continued from day to day until the 15th day of May 1903 as hereinafter stated.

Whereupon—

The above named accused, Thomas F. Holden, in open court expressly waived trial by jury, and in consequence thereof the trial was had before and by the aforesaid judge, Ivory G. Kimball.

And upon the said trial, to maintain the issues on their part joined, the United States gave in evidence testimony tending to prove that on the 16th day of September, 1902, certain specimens of water mixed with oil and tar were taken by Harry R. Lohman from the Anacostia river, which is a tributary of the Potomac river, at a point where a certain discharge of water mixed with tar and oil is made from the premises of the Washington Gas-light Company into the water of the said Anacostia river, it being admitted by the ac-

cused that the said premises of the Washington Gas-light Company were then and there under his control, and that he was responsible for the said discharge.

7 And further, that the said specimens had been analyzed by chemist John D. Hird, chemist for the District of Columbia, and that he found in one of the said specimens taken at the point in question 2.55 per cent. of coal tar, and that the process used in obtaining the result was by extraction with a chemical substance known as xylod, which was then evaporated, and the result weighed. That the process was carried on in a room at a temperature of from 15.5 to 18 degrees, centigrade, which is equivalent to about 65 degrees Fahrenheit.

And further to maintain the issues on its part joined the Government gave other evidence tending to prove that at other times water mixed with tar and oil flowed from the gas-works of the accused into the said Anacostia river, but produced no samples of said water so mixed, and offered no analysis thereof.

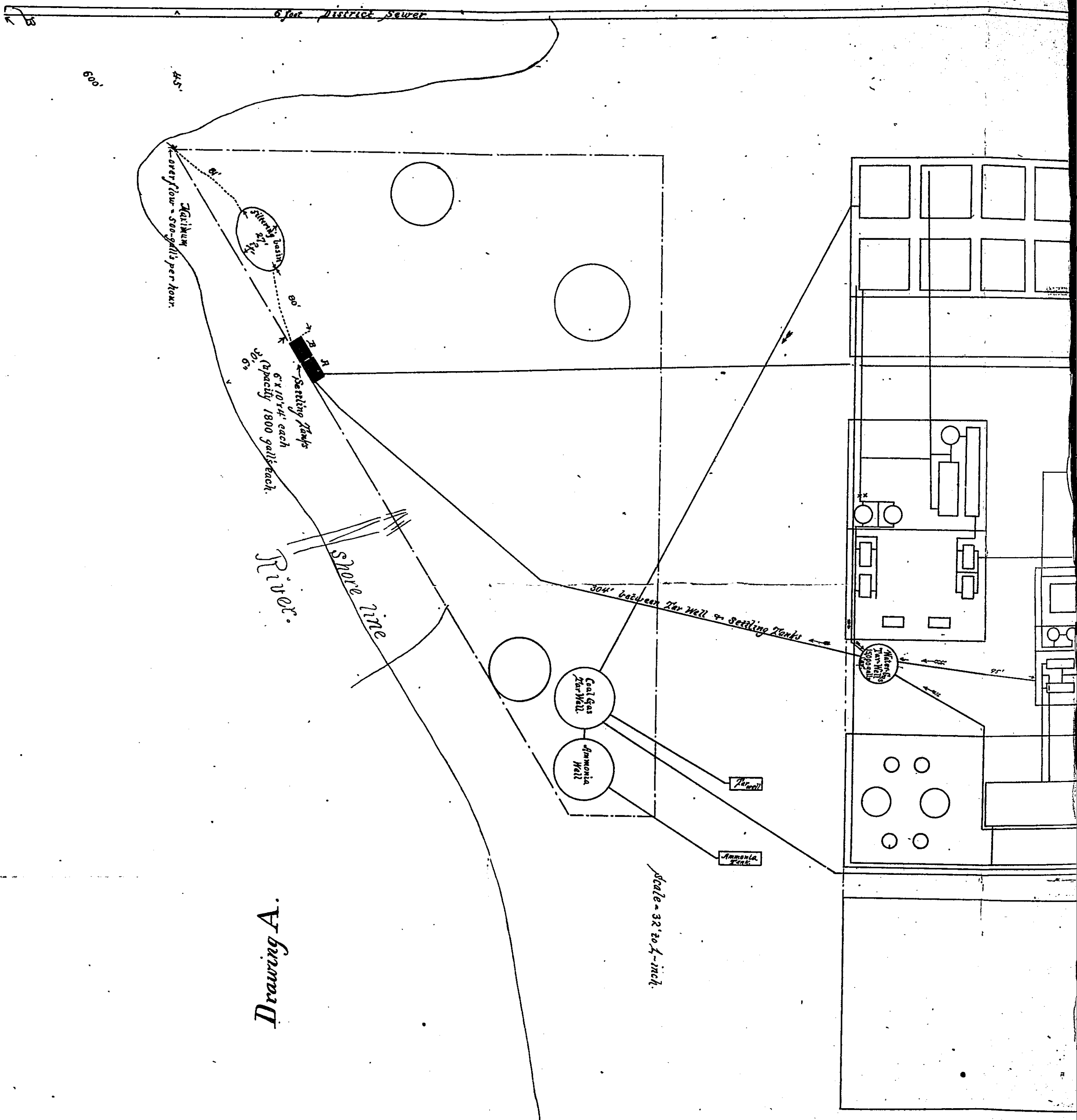
And thereupon the accused, to maintain the issues on his part joined, himself gave evidence that the only discharge of water from the gas-works in question into the Anacostia river is from what is called the filtering basin hereinafter described, and that said filtering basin has no connection whatever with any refuse matter from the manufacture of coal-gas, and that no such refuse matter from coal-gas is discharged in the Anacostia river, but only refuse matter from water-gas. That the gas-works upon the premises in question are conducted in the following manner:

8 "We first manufacture what we call water-gas or hydrogen-gas in certain generators. The cupola, a certain part of the apparatus, is filled with fuel, and brought up to an incandescent heat. Then a flood of steam is let into that body of fuel, whereby the carbon is displaced, and the result is a hydrogen or straight water-gas. That goes into what is called a relief holder. Then the gas, as it is needed, is taken out and run through illuminators, which are nothing more than wrought iron boxes. In these boxes are eleven zig-zag trays, and on each tray are about eleven feet of one inch steel coil. The object of that is to heat the illuminators up to 300 degrees Fahrenheit if possible. Then oil is mixed for the first time with the gas in the illuminator. The hydrogen gas comes out of the relief holder, and enters at the top of the illuminator with the oil. When that gas leaves the illuminator it is conducted to what are called benches, containing the retorts and the fixing chains, and it is fed through the retorts. There are 42 retorts in one stack, and then the gas goes up the stand-pipe, and down into a hydraulic main. In that hydraulic main there is an air tight seal, and the gas comes in from the retort. A water seal is maintained there in order to prevent the gas from getting back into the retort. It is necessary to supply a certain amount of water to make up for the evaporation, and to keep the temperature for the hydraulic main normal, that is, at a proper degree of temperature to allow the gas to mix. In that way there is a deposit

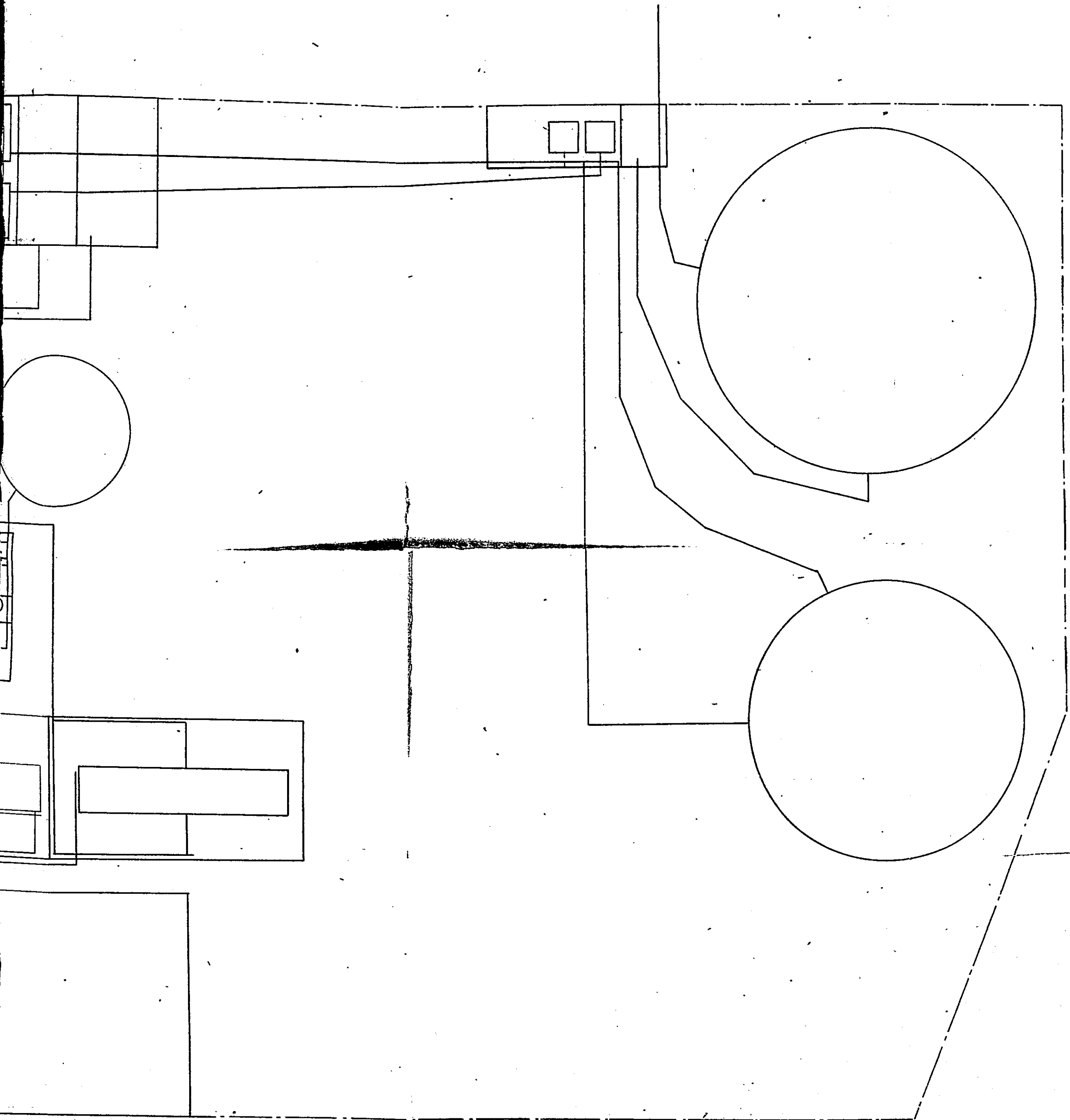
of coal tar. This is the tar that is in the gas, and as it comes down the dip pipe it drops to the bottom. The tar runs off into what we call a water-gas tar-well, which is of 15,000 gallons capacity. Coal tar is the product which results from the use of oil in the process of manufacturing water-gas.

The drawing "A," which is on a scale of 32 feet to an inch, exhibits this water-gas tar well, as also the other parts of the apparatus in question.

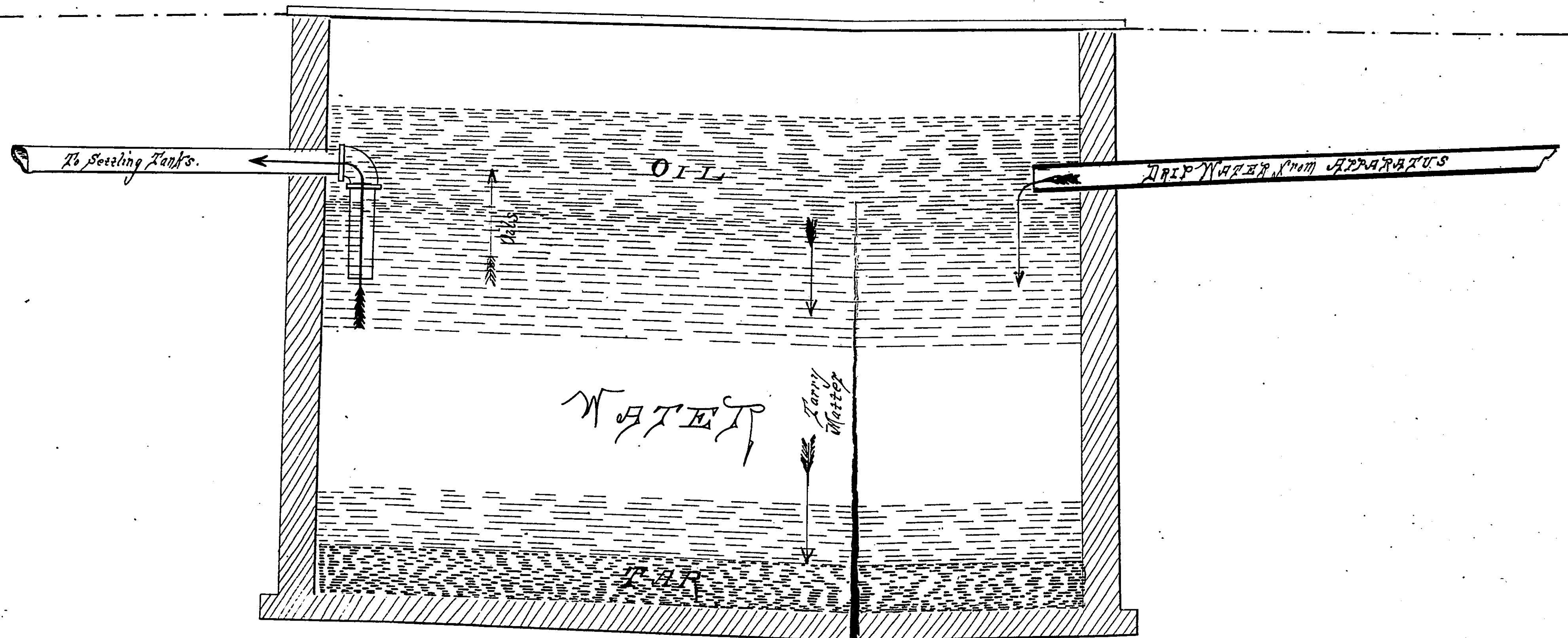
(Here follows drawing A, p. 9.)



Point
H

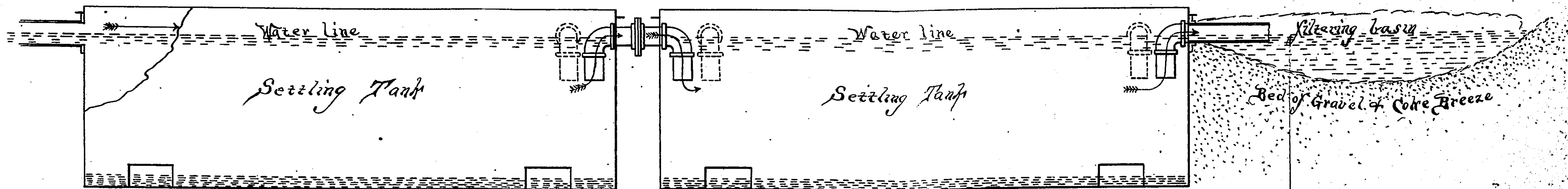
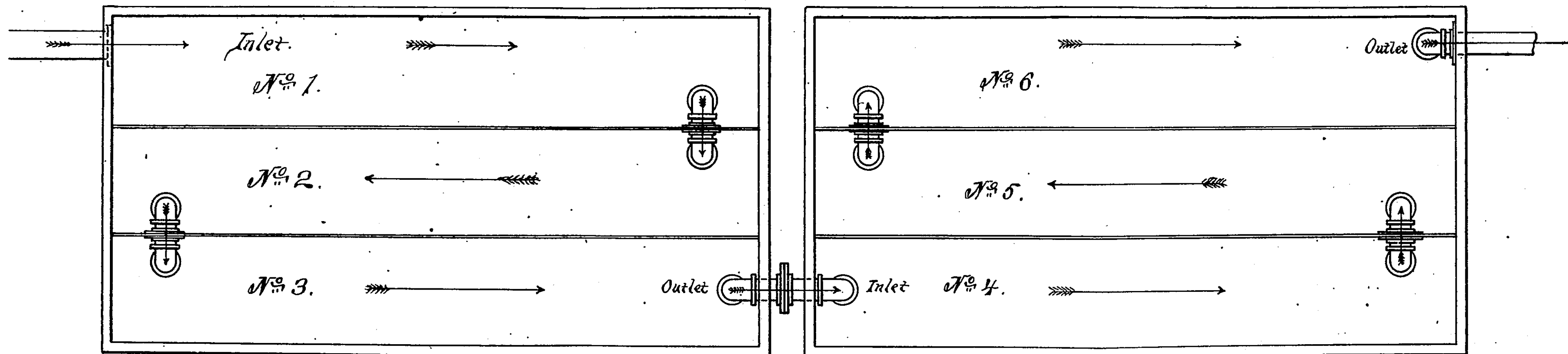


Drawing A-a.



SECTION OF TAR WELL.

Drawing B.
PLAN.



SECTION.

10 The drawing "Aa" is a cross section of this same tar well. This tar well is laid with Portland cement. By the effect of gravity, the coal tar, which is much heavier in specific gravity than water, is naturally precipitated to the bottom. The light oils in the water flow to the top, and by means of a piece of pipe fitted on as shown in the drawing, the oil is not allowed to escape until all the tar which is in the oil has been precipitated to the bottom in the form of little molecules of tar. There is a portion of the water that flows out steadily and smoothly into the settling tanks, which are 304 feet from the tar well.

These settling tanks are fully illustrated in the drawing "B," where they are shown in profile and also horizontally. These tanks are composed of six pockets, each of which is ten feet long, two feet wide, and four feet deep. They are only connected by pipes running from one to the other, which the drawings show, and the course of the discharge is from pocket 1 through the pipe into 2, from 2 in the same manner into 3, from 3 in the same manner into 4, from 4 in the same manner into 5, and from 5 in the same manner into 6, from which last pocket, 6, there is an outlet pipe, running into what is called the filtering basin, and which is shown on drawings A and B.

The filtering basin is 80 feet from tank No. 6. This filtering basin is 27 feet long, and from the basin there is a discharge into the Anacostia river at a point 81 feet from the extremity of the basin. In drawing "A" the tar at the bottom is indicated by black ink, the water by blue ink, and the oil by green ink. By reference to the drawing B, it

(Here follow drawing Aa and drawing B, pp. 11 and 12.)

13 will be seen from the profile of the settling tanks that the communicating pipes between the tanks extend to a certain depth below the surface of the water. This depth is 12 inches. In addition, there are suction pipes to each one of these six pockets, so that the tar which sinks to the bottom can be and is pumped out without disturbing the water. The oil which is on the top is skimmed off by a man employed especially for that purpose, three times a day, and this oil, together with the tar pumped, as just said, from the bottom of these settling tanks, is mixed with what is called coke breeze, and is all used for fuel in the gas-works.

As I have already in detail indicated, all the heavy parts of the coal tar go to the bottom, both in the tar well and in the settling tanks. The water forms in the middle, and the oil is deposited on top. This apparatus is so arranged that the skimming of the tanks would have to be omitted for three days before the oil could get down low enough in pocket No. 6 to run from that pocket into the filtering basin.

There is a distance of 304 feet from the tar well to the settling tanks, which distance is arranged in order to allow the hot water from the tar well to cool, so that whatever particles of tar are in the water can be deposited in the settling tanks. The pipe through which the water runs from the tar well into the first settling tank is two inches in diameter, as is also the discharge pipe from settling tank No. 6. The first of these pipes through which the water flows

14 into settling tank No. 1 is on the same level with the discharge pipe from tank No. 6. As the water leaves settling tank No.

6 it passes through a pipe eighty feet long to a filtering basin which is shown on plan No. A. This filtering basin holds about 2,700 gallons of water, is eighteen inches deep, 27 feet long and 21 feet wide. The flow is very slack. The purpose of this filtering basin is to arrest any scum that may form on the surface of the water. There is no opening of any kind at the bottom of the filtering basin, nor is there any way through which anything that comes into the filtering basin could get into the river, except through the outlet that is on this plat A.

The temperature of the water in the filtering basin is about 120 degrees Fahrenheit. It enters the tar well at about 180 degrees, and as it passes along it is gradually reduced in temperature. We have one of the most modern processes in the country, or in the world, I might say, and there is nothing to our knowledge that would do any better work than we have now. The good work and the good results of the process are remarkable.

I have taken soundings of the Potomac river in the immediate vicinity of the gas works, and I should estimate that there are about 14 million gallons of water in front of the works. There is a rise and fall in the tide, and there is also the water that comes down from Bladensburg, and from that country. The water that is discharged from the filtering basin into the river as a usual thing is much clearer than the water in the Anacostia river. The samples introduced in behalf of the Government have no resemblance to the

15 water that is discharged from the filtering basin, but look exactly like the water as it comes into the first one of the settling tanks. It would not be possible to get any such material as that out of the filtering basin, and the only way in which it could be gotten out of the first one of the settling tanks would be by putting a stick or bucket in and stirring the body of the deposit up. There has been no change in the works since a former trial in this court before Judge Kimball, involving these same matters.

The oil-like scum spreading on the surface of No. 6 of the settling tanks is not more than half the thickness of a sheet of paper.

And next the said witness Holden testified that he has been conversant with gas machinery and gas manufacture for 17 years, in the cities of Washington, Detroit, St. Paul, Chattanooga and Atlanta, and at the Northern Limited works, in Philadelphia; that he has planned gas works, and has planned the apparatus for said works; that he has had charge of the gas works in question for the last eight years; that about 900 gallons an hour flow from the filtering basin in question into the Anacostia river, and that it comes exclusively from the manufacture of water-gas; that the 900 gallons in question are the necessary refuse water, and are the refuse water from the entire water-gas apparatus; that the use of that amount of water is absolutely essential in the manufacture of water-gas; that it is impossible to use water in the manufacture of water-gas
16 without having it impregnated to some extent with ammoniacal liquor and with coal-tar.

That the witness has, as a man conversant with gas machinery and gas manufacture, kept up with the inventions with reference to that subject; that he is conversant with about fifty different kinds of apparatus for the manufacture of gas, or processes that have been patented.

Whereupon the witness was asked the following question: "I will ask you whether or not there is any apparatus known to you at present which enables coal tar to be absolutely separated from water which is impregnated with it."

To the asking of which question counsel for the United States objected, and the court sustained the said objection and refused to allow the question to be answered. To which ruling of the court counsel for the accused then and there excepted, and the judge entered the said exception upon his minutes.

Whereupon counsel for the accused asked the witness the following question: "I will ask you whether or not there is any plan known to you as an expert through which water which is used as in the premises in question, in the manufacture of gas, can be absolutely freed either from ammonia or from coal tar?" to which the witness answered as follows: "There is only one way to do it, and that is to take samples of this by-product or water, and analyze it in a laboratory on a small scale. It would take years to analyze it and free all the water from it."

"Q. How could this water which is discharged at the rate of 900 gallons an hour be gotten rid of?"

17 "A. The only way I see, Mr. Perry, is to drink it. That would be the only way I know of.

"Q. Well, if the court will pardon me, you cannot hold 900 gallons, even in 24 hours. You would have to get rid of it, and perhaps you would not improve it in the process. So it is still something you have got to get rid of, is it not?

"A. Exactly, sir.

"The COURT: Could it not be gotten rid of by digging a deep well and running it right into that?

"Mr. PERRY, SR.: 900 gallons an hour? Why, your honor must be thinking of the old well we have heard of that has not any bottom to it.

"The COURT: I am asking the witness a question.

"By the COURT:

"Q. If you should sink a well into sand, could it not be dissipated?

"Mr. PERRY, SR.: At that rate?

"A. If you had sufficient weight to drive it through the sand, you would have to have a terrible depth.

"By Mr. PERRY, SR.:

"Q. Do you know of any process that can get rid of a discharge of 900 gallons of water an hour except letting it flow off in a stream?

"A. I do not, sir."

Whereupon counsel for the United States asked the witness the following questions:

"Q. Do you mean you could not take it (this ammoniacal liquid) out of that water?

18 "A. Why, if you take a pint of the water and take it to a laboratory you might find a certain percentage of ammonia. No; we could not take it out.

"Q. Do you mean to say you could not burn that water simply to eliminate it?

"Mr. PERRY, JR.: Burn it—burn the water?

"Mr. MULLOWNY: Yes; burn the water.

"A. Oh no, you cannot do it. You can boil it and not eliminate it.

"By Mr. MULLOWNY:

"Q. Could it not be eliminated by boiling it and evaporating it?

"A. No, sir; not at the rate of 900 gallons an hour.

"Q. Until it evaporates?

"A. At 900 gallons an hour, I say, it would take too long a time

to evaporate that amount of water. We have tried every way known to science; we have adopted the most modern methods."

Further the witness Holden testified that no change whatever had been made in the gas works in question since the prior information in this case was filed, on the 29th day of March, 1900, and that the works have been in the same condition constantly since that day.

It was then announced by counsel for the United States, in reply to a question of counsel for the accused, that the first information filed in this case, charging the defendant with committing, on the

6th day of August, 1902, substantially the same misdemeanor
19 as the present information charges, had been withdrawn, and the present one substituted in lieu thereof, to which second information the accused had pleaded not guilty and waived a jury trial. Whereupon counsel for the accused moved the court that the accused be discharged, on the ground that they had no knowledge of the filing of the present information; that there had been no service of process on the accused under said information; that they had no authority from the accused to plead to the said information, and that they supposed that the plea was to the original information. And counsel further offered to show that the accused had no knowledge of the filing of the present information; that he had not authorized counsel to plead to the same for him, and that no process thereunder had been served upon him. But the court overruled the said motion; to which ruling of the court the accused then and there excepted, and the judge entered the said exception upon his minutes.

And further to maintain the issues upon his part joined, the accused gave in evidence the testimony of W. E. COLWELL to the effect that he is a manufacturing chemist, and has been engaged in that business for over thirty years, fourteen of which have been in the District of Columbia. And further that for over thirty years he has been intimately acquainted with gas works, and that he has been for many years acquainted with the gas works in question.

Whereupon counsel for the accused asked the witness the following question:

20 "Q. Now I will ask you if there is any way possible, using any sort of apparatus which is known in the manufacture of gas, to entirely eliminate every drop of oil from the refuse water?"

To the asking of which question counsel for the United States objected, on the ground that the words of the statute under which the prosecution was had were mandatory, and that if any quantity of oil escaped intentionally into the river as refuse matter, no matter how minute, the accused would be liable. And the court sustained the said objection, and refused to permit the said question to be asked of the said witness, and the same was not asked.

To which ruling of the court and exclusion of the said question, the accused by his counsel then and there excepted, and the judge entered the said exception upon his minutes; counsel for the accused having previously stated to the judge that they expected to prove

by the said witness that there was no apparatus used in the manufacture of gas which would entirely eliminate the oil from the refuse water.

And the witness Colwell further testified that the water discharged as aforesaid from the filtering basin into the Anacostia river is ordinarily clearer than the water of the Anacostia river.

And the witness Colwell further testified that the process adopted by the Washington Gaslight Company in manufacturing gas
21 compares favorably with that of other gas companies; that it is impossible to separate completely oil from water when once mixed, even chemically, and that one drop of oil will produce an iridescence over an acre of water, and that the thinner the film the greater would be the iridescence.

And further to maintain the issues on his part joined, the accused offered in evidence the testimony of GEORGE W. WHITING, to the effect that he is the superintendent of the B. P. Clapp Ammonia Company, and visits the eastern works of the Washington Gas-light Company several times a month; that he buys there its ammoniacal products; that he is familiar with gas-works, and has been around them for twenty years. Whereupon counsel for the accused asked the witness the following question:

“Q. Is there any way you can suggest by which the gas company, in discharging the water into the river, could do any more than it has done to avoid any waste substance escaping into the water?”

To the asking of which question counsel for the United States objected, and the court sustained the said objection, and refused to allow the question to be answered; to which ruling of the court the accused then and there by his counsel excepted, and the judge entered the said exception upon his minutes.

And further to maintain the issues on his part joined, the
22 accused offered in evidence the testimony of JOHN H. McILHENNY, to the effect that he is seventy-two years of age, and is at present a manufacturer of gas apparatus, in which business he has been engaged for about 25 years; that he has been connected with machinery all of his life, including machinery for steam and gas and water works; that he was originally a gas engineer, and a superintendent of gas works for twenty-five years. That while superintendent of gas works he was, and still is, familiar with the process of manufacturing gas, and with the necessary machinery for such manufacture, such as retorts and generators, and steam engines and boilers, and all sorts of appliances. That after he had been superintendent of gas works for twenty-five years he went into the manufacture of gas apparatus, and has been engaged in that for about twenty-five years, so that for fifty years he has been, and now is, particularly conversant with gas and its manufacture, and the machinery for its manufacture. That he has visited and examined all of the gas works in the principal cities of the United States, New York, Philadelphia, Pittsburg, Chicago—so many that he could not

enumerate them. That he is connected with the gas works in question and has been there very often ; that he is acquainted with the manufacture of gas from water, as well as from coal, and has visited such works.

And next the witness described the different processes in the manufacture of water gas, and testified that water and oil was absolutely necessary in the manufacture of water gas, and that
23 water gas had to be used in order to produce the candle power required of the Washington Gaslight Company by act of Congress in force in the District of Columbia. That it would be impossible to produce gas of the candle power required in the District of Columbia from coal gas only, and that water gas has to be used for that purpose.

That all the gas works witness knows discharge their waste matter into the streams nearest them ; they are all built near streams for that purpose.

Whereupon, counsel for the accused asked the witness the following question :

"Q. Now, I will ask you, having in view your scientific knowledge, to say whether or not there was at that time any device known to you as an expert which could have been applied to better the condition of things and those gas works in connection with the manufacture of gas?"

To the asking of which question counsel for the United States objected, and the court sustained the said objection, and refused to allow the question to be answered. To which ruling of the court the accused then and there excepted, and the judge entered the said exception upon his minutes.

Whereupon counsel for the accused asked the witness the following question :

"Q. Mr. McIlhenny, from your knowledge as an expert, can you or not testify whether, at your examination of these gas works referred to in the preceding question, you could have suggested any device then known to you for the separation of coal tar from water which was not in use there?"

To the asking of which question counsel for the United States objected, and the court sustained the said objection, and refused
24 to allow the question to be answered. To which ruling of the court the accused then and there excepted, and the judge entered the said exception upon his minutes.

And thereupon counsel for the accused asked the said witness the following question :

"Q. Assuming the condition of things at this gas works to be the same today as it was when you examined them the last time this case was brought before the court, I will ask you whether or not, in your knowledge, there is today any scientific device for the complete separation of coal-tar from water?"

To the asking of which question counsel for the United States objected, and the court sustained the said objection, and refused to allow the question to be answered. To which ruling of the court

the accused then and there excepted, and the judge entered the said exception upon his minutes.

And counsel for the accused thereupon stated to the court that he offered to prove by the witness that there is not any device known to science which could better the condition of things at the gas works in question in connection with the manufacture of gas, and that there is not any device known to science for the practical separation of coal tar from water which is not in use at the gas works in question; and that there is not today any scientific device known for the complete separation of coal-tar from water.

Whereupon the witness further testified that there is not any scientific device known to him for the elimination of the use of water in the manufacture of water-gas, and that it is not scientifically possible today to eliminate the use of water in the manufacture of water gas.

Further, that it is not possible to use water in connection with the manufacture either of water gas or coal gas without impregnating the water to some extent with either ammonia or gas-tar, or the smell of gas.

And next counsel for the accused asked the witness the following question:

"Q. I will ask you now, having in mind the examination that you made of the premises in question at the time of the last trial of this matter before the court, whether there is any process known now to science for eliminating gas-tar or oil or ammonia from water used in the production of gas which was not in use on the occasion of your examination at the gas works in question?"

To the asking of which question counsel for the United States objected, and the court sustained the said objection, and refused to allow the question to be answered. To which ruling of the court the accused then and there excepted, and the judge entered the said exception upon his minutes.

Whereupon counsel for the accused stated to the court that he offered to prove by the witness in question that there was not at the time referred to, and is not now, any process known to science for eliminating gas-tar or oil or ammonia from water used in the production of gas which was not in use on the occasion when the witness examined the gas works in question, on the occasion of the last trial of this case.

And next the witness was asked this question:

26 "Q. Is it possible completely to eliminate either ammonia or coal-tar from water which has been used in the manufacture either of water-gas or of coal-gas?"

To which the said witness answered:

"A. I would say that, chemically, I think it could be done; it would be a very expensive and elaborate process; but practically, as the world understands it, it cannot be done." "I suppose the water could be taken, and any element in it could be taken out by chemical process. For instance, if it were ammonia, that could be taken out by a very simple process, probably; but I do not know

that the oil could be taken out. I am not a chemist. Of course the water could be purified by evaporation, and leave everything else behind it; that is, the whole volume of water could be evaporated. But none of these things would be practically possible, because it would increase the cost of producing gas so that it could not be sold here at the prices that it can be. It could not be produced at a marketable price. It would increase the cost of producing the gas to such an extent that it would not be practicable."

Whereupon the witness was asked the following question :

"Q. When you speak of the enhanced cost that would be caused by the chemical treatment of this water, what cost did you have reference to, practically ?

"A. The immense quantity of fuel it would take to vaporize it.

"Q. What I mean is this: We sell gas now here, by order of Congress, at \$1.00 a thousand cubic feet. What could gas be sold for per thousand cubic feet if this water were required to be
27 evaporated in that way? How much would it add to the cost?

"A. Well, of course I could not answer that exactly; but it would greatly increase the cost of it.

"Q. Do you mean it would double it, or quintuple it, or what?

"A. No, I do not think so; it would not double it.

"Q. How would it increase it?

"A. I do not know exactly, Mr. Perry, but I know it would greatly increase the cost of it. I know that."

And further the accused offered testimony tending to prove that the sample produced by the witness for the United States, Harry R. Lohmann, could not possibly have been taken from any point near the discharge of the said filtering-basin into the Anacostia river, but that it had an appearance like the liquid contained in the first of the settling tanks.

And next the accused gave in evidence the testimony of Professor CHARLES E. MUNROE, to the effect that he is a chemist by profession, and has been engaged in the practice of that profession since the year 1871; that he examined the gas works in question on the occasion of the former information, in March, 1900, and also examined the same premises on the 13th and on the 24th days of October, 1902; that on all these occasions he took samples of the refuse water from the settling tanks in question, and also from the filtering basin, and from the Anacostia river at the point of discharge of the said refuse water from the said filtering basin into the said river.

And thereupon the said witness was asked the following question :

28 "Q. Speaking generally, what, if any, difference did you notice between the condition then and at the time of your previous inspection some years ago?"

To the asking of which question counsel for the United States objected, and the court sustained the said objection, and refused to

allow the question to be answered. To which ruling of the court the accused then and there excepted, and the judge entered the said exception upon his minutes.

Whereupon the witness further testified as follows:

"When I examined the premises in October last, I found there that the discharge from the tar tank of the gas works and from the purifier was being run into a separator, a separating tank which was erected or imbedded near the shore of the river; that after passage of this material through this separating tank it then flowed on to a filtering basin, where it was further purified; and that then the material was discharged into the stream. That is, I found there an apparatus devised for the process of separating all practicable last traces of the waste product from the water used in the various operations within the works before that water was discharged into the stream.

And the said witness Munroe further testified that he has noticed iridescent films on water near gas works; such films may come from oil, the decomposition of vegetable matter, from the sewer, or a variety of other sources; such films can be seen on marshes near to which are no gas works; the surface over which oil will spread is enormous in proportion to the oil; that iridescent films are frequently seen on the streets of this city; that the water discharged from the eastern works of the Washington Gas-light Company is more suitable for drinking than the water from the Twelfth Street sewer, that empties near by the eastern works of the company; that water-gas coal-tar is an extremely complex substance, and is the residue of the product of the oil used in the carburetting, mixing with the other substances used in the manufacture of water-gas.

Whereupon the witness further testified as follows:

"I took the following specimens: First, this specimen which I have marked "No. 1." Also: "Inlet to tar settling tank, October 13, 1902."

29 The vessel was dipped in this pipe, and the material taken from that pipe immediately placed in the bottle.

I did not examine this specimen any further.

The second specimen that I took was obtained from these tar settling tanks by means of a pump, which is arranged here for the purpose of pumping the tar out from the tanks.

This is the material from the bottom of those tanks—the material that is pumped out to be used. This specimen is marked "Figure 2."

The third specimen, marked "Figure 3," is taken from the delivery pipe of the filtering basin, and is taken at the outlet. I was very careful to take it as it was flowing out. I put the vessel in so that the liquid was obtained in the condition in which it was discharged; and that was placed in this bottle, marked "No. 3."

The next sample, marked "No. 4," was taken from the Anacostia river above the sewer and below the gas works' outlet. It was taken about a hundred yards from the shore, and about 20 feet east of the mouth of the 12th Street sewer, and in front of it.

Probably No. 5 was taken from the river about as far east of the point of discharge from the filtering basin as the point where the sample "Figure 4" was taken west, and about the same distance out in the river. All of these samples were taken on the same day, and within an hour the entire taking of the samples was completed.

I examined Nos. 3, 4 and 5, and determined in them the total solids, and then the free and so-called albumenoid ammonia.
30 No. 3 is, as I said, from the effluent that runs from these works into the river, and was taken from the outlet of the filtering basin. I found in there some ammonia, both free and, probably, combined. I found no ammoniacal liquor. I determined ammonia, and found that the total ammonia that was to be obtained from it amounted to 8.69 grains per gallon, or about 149 parts per million. That is an insignificant portion of ammonia in water, unless that water is to be used as a beverage. It is an infinitesimal portion.

I next determined the total and volatile solids. I found that the total solids amounted to 446/10,000 of 1 per. cent, and the volatile solids to 146/10,000 of 1 per cent.

"Q. What proportion is that?

"A. It is very insignificant.

"Q. Did you find anything else?

"A. I made no determination of anything else.

"Q. Did you find any coal-tar?

"A. I did not determine coal tar. I recognized the presence of coal-tar there.

"Q. To what extent?

"A. To an extremely minute extent.

"Q. So minute that you did not do what?

"A. That I did not think it was worth estimation.

"Q. Now, take the next specimen, please, Mr. Munroe—No. 4. Where did that come from?

"A. That came from the Anacostia river, to the east of the mouth of the sewer, and to the west of the outlet from the filtering basin.

"Q. Did you examine that?

31 "A. I did.

"Q. With what result?

"A. I found in that that there was about two and 176/1000 parts of ammonia in one million.

"Q. What result is that?

"A. That is insignificant.

"Q. How about the solid matters?

"A. The solid matters? I found 45-100 of a percent. of total, and 76-10,000 per cent. of volatiles.

"Q. What result was that?

"A. Insignificant, except from the potable standpoint.

"By the COURT:

"Q. What did those solids consist of?

"A. That I did not ascertain.

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"Q. Do you find it naturally in the river, without it might have come from these works?

"A. Oh, undoubtedly. The water was turbid. It is tide-water and therefore brackish, hence containing solids in solution.

"Q. So that the amount of solids there, Professor, would not be an indication that they came from these works?

"A. None whatever.

"By Mr. PERRY:

"Q. Now, did you find any coal-tar?

"A. I did not observe any coal-tar in there.

"Q. Why did you not make the examination for coal-tar?

"A. Because the amount, if present, was so insignificant.

"Q. Now, No. 5 is the next.

32 "A. No. 5—I found 2.192 of ammonia in one million parts.

"The COURT: Give me that again, please.

"The WITNESS: 2.192 parts of ammonia in one million parts of water.

"By Mr. PERRY:

"Q. What proportion is that?

"A. That is insignificant, except for potable purposes—drinking purposes.

"Q. And what result did you find with respect to solid matter?

"A. I found four hundred and four ten-thousandths of a per cent. of total solids, and seventy-six ten-thousandths of one per cent. of volatile matter.

"Q. What proportion is that?

"A. That is insignificant.

"Q. Did you make any examination for coal tar?

"A. I did not.

"Q. Why?

"A. Because the quantity present appeared insignificant upon examination.

"Q. When you say it appeared insignificant, Mr. Munroe, just tell what you mean as a man of science.

"A. I mean by that that from the appearance of the water it was, as you can see, quite free from appearances of that sort. The water was turbid, and it has now settled up.

"Q. When you say 'insignificant' do you use the word in a common sense, or in a scientific sense?

"A. I mean in a common sense way.

33 "Q. We ordinary men might think a thing was insignificant which you scientific men might not think was insignificant.

"A. I mean it in a common sense way.

"Q. Now, I want to know in what sense you used that word?

"A. A common sense way.

"Q. And what degree of presence there would you have consid-

ered significant, so that you would have examined it scientifically or chemically?

"A. If it had been obvious to the eye.

"Q. So that I understand that in all of those details there was nothing to indicate to the eye that there was any coal-tar there?

"A. Except in No. 3, a small amount as it passed out.

"Q. And that, you say was still so insignificant that you did not scientifically estimate it?

"A. It was."

And next the accused, to maintain the issues on his part joined, offered the testimony of Dr. HARVEY W. WILEY, who testified as follows:

"I am a chemist, and am chief of the Bureau of Chemistry of the Department of Agriculture, and have been such for nearly twenty years. I have practiced my profession as a chemist for twenty-seven years; have visited the gas works in question on several occasions, and have a general knowledge of the method in which the process of manufacturing water-gas is carried on there.

34 Water gas in general is produced by passing superheated steam over carbon at a high temperature, producing decomposition of the water, the union of the hydrogen with the carbon forming hydro-carbons. These are afterwards saturated with low-boiling gasoline, or a petroleum product, which is called carburetting, in technical language, which adds to the water-gas a certain element from the gasoline, a gaseous element. This mixed gas is afterwards fixed by passing through retorts at a temperature more or less elevated, which makes it a permanent gas, so that on cooling it does not separate out.

The necessary refuse is water, a certain quantity of ammonia, and a certain quantity of a mixed material composed of a great many different substances, known as coal-tar.

I have measured the water which is discharged into the Anacostia river at the gas works in question, as a necessary refuse of this process, and I find it to be a gallon in four seconds—the total discharge of waste products. That includes all waste products; a gallon in four seconds, or fifteen gallons a minute, or 900 gallons an hour. This seems to be a necessary refuse. I do not see how the process could be carried on without this product or effluent. The water must flow out. I do not know that it could be any less in quantity. I am not sufficiently familiar with the technical details, and so I know there must be a certain quantity. Whether it could be made less or not I could not say.

I have no familiarity with the machinery or mechanism of gas works; that is, I have had no technical practice in that direction at all.

35 I was a witness in the former case connected with these works. On that occasion I had inspected them. I have not seen them since until I went the other day.

I visited the works on the 13th of October, 1902. No one knew

that I was coming. I went with Professor Munroe. We made no inspection of the gas works on the inside as we did on the previous case, because our attention was called solely to the effluent.

I made an investigation of the methods of separating the coal-tar in the effluent from the waters, independently of Mr. Munroe's investigations, although we were together most of the time; but we made our investigations entirely independently. I noticed the apparatus which was used for separating the coal-tar, the method of recovering the coal-tar, and also the way in which the effluent water was finally discharged into the river. I took samples of the various products which were in the effluent tube, which I have in the court here. I call the effluent tube the pipe which comes from the gas works and empties into the purifying tanks—the tube which brings this kind of material which I have collected at the tube. I mean the tube that runs directly from the works into these tanks. There are six tanks, and then there is one large pond, the final pond. There are two sets of three tanks each. The water comes from the gas works into these settling tanks, and it bears a certain quantity of coal tar, a considerable quantity, which is easily seen with the naked eye. In this tank a portion of the tar settles to the bottom. It goes down

36 here, and a portion remains on top. It is so arranged that nothing on the top can flow into the next tank, because this tube which conducts over here dips down underneath the surface. It comes down like that, so that the tar that settles does not go through there (indicating), and the tar that rises to the top does not go in there; and this top tar is taken off from time to time with a shovel—skimmed off with a thin shovel. Any tar that passes through there by sinking, as some of it may, of course, comes into this tank and goes through the same process, and so on successively, each one being constructed exactly like the other, and having no connection between them except this pipe. These settling tanks are all constructed alike, exactly in the same way. It is so arranged that nothing at the bottom and nothing at the top can go into these pipes, but only what is in between, unless the oil on top should come down below the mouth of the pipe.

After it has left the sixth one of the settling tanks, it passes through a tube into the filtering basin. There it simply runs in and passes on and comes out at the exit. There is no separation of any kind there except gravity—anything that comes to the surface or settles to the bottom. It goes from the filtering basin into the river, at the rate I have specified, 900 gallons an hour.

Anything that is on the surface would go along with the water and out into the river. That which settles sinks to the bottom and must remain there until somebody takes it out, as it cannot get out with the flow. It is impossible. On one occasion I took up a sample from the bottom of that tank, and found nothing but black mud. I could not find any coal tar in it.

37 If there is any communication from the bottom of the tank with the river, I have never been able to discover it. There seems to be none at all, because the quantity of water flowing in

there, as far as I can judge by the eye, is just about the same as the quantity flowing out.

I took five samples on the thirteenth of October, and two more yesterday, October 29th. The sample No. 1 was taken where the effluent tube from the works goes into the settling tank No. 1. I made no analysis of this.

Sample No. 2 is taken from the bottom of the settling tank, the coal-tar that settles to the bottom. I did not make any analysis of No. 2.

Sample No. 3 is the water as it flows into the river from the last tank, or rather the filtering basin. I took this exactly from the exit of the filtering pond, which was the place where I measured the flow.

No. 4 came from the exit near the big sewer, and about 100 yards from where the effluent from the gas works enters the river, diagonally towards the end of the sewer, and about 100 feet from the mouth of the sewer, and a little above. I took it above the sewer, so as to get anything that the tide might bring into it from the sewer. The tide was flowing up the stream.

No. 5 came from the same relative distance above the effluent that that was above the big sewer, so as to get practically the same thing from the two sewers—the big sewer from the city, and this effluent sewer from the gas works; so that it might contain the mingled product.

38 I made an analysis of Nos. 3, 4 and 5.

No. 3 is the water as it flows from the filtering basin into the river. I found that it contained a certain quantity of what we call solid matter, and a considerable quantity of ammonia; and I did not measure the coal tar in that. I assume that it contained a trace of coal-tar. I did not measure the coal-tar there, because the appearance of it to me showed that it was such an infinitesimal quantity, almost, that it was almost impossible to determine it. I assumed that it contained traces of coal-tar, because it had been previously mixed with coal-tar, and the impossibility of absolutely making a separation in that case was apparent. So if it had been once mixed with coal-tar, the process of settling and separation, no matter how perfect it is, will never chemically purify the water so as to make it absolutely free of every trace of coal-tar. I did not measure it at the time, because it seemed almost a hopeless task to undertake it; but I have measured it in the sample that I took from the same source yesterday. What I went for yesterday was to get another sample for the purpose of seeing if I could determine the amount of coal-tar in it.

This sample (indicating) I took yesterday, from the same place that No. 3 was taken from. I have made an attempt, and I think a successful one, to measure it.

I measured the quantity of coal-tar in this in two ways. I first obtained some of the coal-tar as free as I could from water, as it came from the effluent tube, by skimming the coal-tar to get it as

free as possible from water. I got this sample as it came out of the effluent tube into the first settling tank.

39 That represents, in my opinion, pretty nearly pure-coal-tar, as nearly as you could get it by just lifting it off in the most careful manner from water. It floats on top at first, and I got it just as it came out of the factory. I should say that this was probably thirty or forty per cent. of coal-tar, and maybe sixty or seventy per cent. of water in it.

Now, I first determined what solvents would dissolve the coal-tar, and at the same time would not be miscible with water; because a solvent which would dissolve the coal-tar and still mix with the water would not separate it, but a solvent which would dissolve the coal-tar and would not mix with water could be separated. I found that both ether and chloroform would dissolve this matter, leaving no residue; and as neither ether nor chloroform is miscible with water I was led to believe that if there be any coal-tar in this water I could separate it by shaking it with ether or with alcohol, or with both. That was the theory upon which I proceeded; and I found that it was correct.

Now, I first took a single drop of this coal-tar product, a very small drop, and put it into one liter of pure distilled water, and then shook that drop thoroughly with the water. I then applied my solvents to this mixture which I made artificially, and I secured the results which I will show the court.

The COURT: I want to ask you a question.

By the COURT:

40 Q. Why is there a difference between the two samples which you say were taken at the same place—a difference in the color, the appearance?

A. Well, I do not know. That seems to have more dirt in it. That is not coal-tar; that is nothing but dirt (referring to sample No. 3). That is the first one I took. This one seems to be pretty free of dirt; but I took them in exactly the same way.

Mr. PERRY: But that is not coal-tar, you say—that sediment?

The WITNESS: Oh, no; that is not coal tar. That is totally insoluble in the solvents.

By Mr. MULLOWNY:

Q. This is No. 1, is it not?

A. That is the one I took yesterday.

Q. Right off as it flows into the first tank?

A. That is the coal-tar that I skimmed off. I wanted to get it as pure as possible. Now, I took a small drop of this, dropping it from a very fine tube, as small a drop as I could, after having shaken it all up and gotten it uniform; and I dropped it into one liter of distilled water.

Q. A liter is how much?

A. A liter is a million millograms. In ordinary language it is about a quart.

(After an informal colloquy between counsel :)

The WITNESS: A liter is a million millograms. Now, I shook that all up in the water, and it apparently disappeared. That is, I could see that there were little greasy specks left around it in the containing vessel ; but the coal-tar was such a small quantity that it was practically distributed throughout the whole mass.

41 Then I added the ether, and shook that up with ether thoroughly, on the theory which I had proved beforehand, that ether would dissolve this matter. Then I allowed the two liquids to separate. The ether floated on top, and carried with it, presumably, theoretically, the coal-tar, which I measured. I had this in what we call a separatory funnel, so that you can open it below, and let the water all run off ; and when the water had run out and the ether solution was left I ran it into this weigh-dish. I previously assured myself that at the temperature of drying this coal-tar is not volatile. Professor Loomey, of Zurich, who is the greatest authority in the world on coal-tar, says that only three per cent. of coal-tar is volatile at 110 degrees, which is ten degrees above the boiling point of water. That is 110 degrees centigrade, which would be over 220 degrees, say 255 degrees, Fahrenheit. He says that only three per cent. of coal tar is volatile at 110 degrees ; therefore I was sure not to lose anything.

By Mr. PERRY :

Q. Doctor, in order to have everything perfectly certain on the record here, I understand that you are now testifying as to the experiments made by taking one drop of this mixture?

A. Of this mixture.

Q. From the smaller, unmarked bottle?

A. Yes sir.

Q. Which contains the product as it comes into settling tank No. 1?

Mr. PERRY, JR.: It is taken by skimming.

42 Mr. PERRY, SR.: It is taken by skimming.

A. Yes, getting as pure coal-tar as possible.

By Mr. PERRY, SR.:

Q. How about No. 2?

A. This I got right as it came out of the factory, by skimming. I took the drop, as near as I could make it—I dropped it all from the same tube—and put it into this weigh-dish, and dried it in exactly the same way, so that I could get the total.”

“ I took a drop as it comes from the gas works, and before it goes into the settling tank at all.

Now, there are a little over three millograms in the drop that I dried and measured. Of course a drop may vary from time to time ; and it might be a little different, a little more or less. That is three parts per million. If it had been a liter, and I had evaporated it

to dryness and got three millograms, it would have been three parts to a million—that is, three millograms.

Now, when I shook this out of the water I got a little over three millograms, showing that the drop that I had on the water must have been a little bigger than the other.”

“I had recovered it all. That is, I got more than the drop that I shook out of the water, showing that the drop which I had added to the water—of course the water being distilled, and there was nothing coming out of that, therefore the drop which I added to the water must have been a little larger than this drop, because I got in that ether extract five millograms instead of nearly four millograms,

43 which is an infinitesimal quantity larger. Then I did the same with chloroform. I added another drop to the same quantity of water, shook it out with chloroform, and got practically the same quantity—a little over five millograms—return. Then, having proved that my process was effective, I was ready to go to work on the unknown body.

I took a liter—that is, a million millograms—of this effluent water. I added the same quantity of chloroform which I had added to the other. The quantity is not so important, provided you get enough to make a good separation. In point of fact I added about fifty cubic centimeters in each case. I then shook the mass thoroughly. Did I say ether or chloroform. Anyway, it does not make any difference. However, the chloroform goes to the bottom, being heavier than water, and the ether goes to the top; so I got a separation in both ends of the line in that way, by using these two reagents.

I then separated this and evaporated it, exactly as I have told you; and I recovered, by the chloroform, sixteen millograms of coal-tar. Here it is. About three drops. That is sixteen parts per million. Now, I think I am able to testify to this court that one million gallons of this liquor flowing into the river would carry sixteen gallons of coal-tar. I think I have demonstrated that. If you measure that in percentages, it is less than one-hundredth of one per cent.

By Mr. PERRY:

Q. It does not make a thousandth per cent.?

A. No, it does not.

44 Q. Can you express——

A. (Interrupting.) You see, a million is a quantity which those of us who are not in the trusts can hardly think of.

Q. Poor men can hardly think of it?

A. That is, a million is more than the human mind can conceive of, in numbers, unless you belong to the trusts. In a million gallons you get sixteen gallons.”

“Now, I did the same thing with the chloroform, and I got eighteen parts per million. That is, they run almost together, showing that both methods are entirely effective in measuring the quantity. Ether, however, as you probably know, creeps. Instead of getting all of it in the bottom of the dish I got a lot of it that crept and

stuck to the outside. That is the one I took out with ether (indicating). It crept all over, and stuck to the outside as well as the inside of the dish.

The COURT: I have been figuring a little while you have been talking, Doctor. That would mean sixteen gallons in about fifty days?

Mr. GIVEN: Forty days.

A. About fifty days.

By the COURT:

Q. It means sixteen gallons in about fifty days?

A. About fifty days; yes sir; and that is the quantity poured into that body of water, the Anacostia river.

By Mr. PERRY:

Q. Now, is there any further analysis you made, Doctor?

45 A. I examined these waters from the river for the ordinary sanitary analysis, to see how much they had been polluted by both the sewer below and the effluent sewer from the gas-works above. These two examinations showed there was practically no difference in the character of the two samples of water. They had both almost the same quantity of free ammonia, and the same quantity of albumenoid ammonia, and the same quantity of solid matter. I will say to the court, also, that this water has the same quantity of solid matter that the river water has (indicating sample No. 3). It has apparently the same amount of mineral matter and solid matter; and my analysis shows that it has apparently exactly the same quantity. Of course the amount of this material would be so infinitesimal that it would not increase, chemically, the amount of solid matter present."

The witness further testified that the quantity of ammonia in the effluent water was infinitesimal, or that it was not injurious to health, but tended to correct the foul water from the sewer.

Whereupon the witness was requested by the court to take further specimens of the water in question, and to analyze them, and report the results to the court.

Whereupon, having made the said examination as requested, the said witness, Dr. Harvey W. Wiley, on the 7th day of November, 1902, further testified as follows.

"On the fifth of the present month I visited the gas works in question again for the purpose of taking additional samples, and proceeded as follows: I took the first sample of the film at
46 about 11:15 o'clock in the morning, I noticed the general appearance of the filtering pond, that is the last pond, and also looked at the settling tank on that date. I found the same appearances I had found there before, a large number of iridescent particles floating on the surface of the last tank, what they call the filtering tank there. I also noticed those same iridescent particles on the water in the estuary that comes up where this effluent

emerges into the river, as before, only on this day it was perfectly calm; the surface of the water was extremely smooth, and I could see them better in the river than I had ever been able to do before. They were plainer and more expanded on top into small particles, on account of the stillness of the surface. It was an extremely favorable day to observe this appearance, and get the samples which I wished to get. I will describe these samples, and how they were taken.

I took another sample of the effluent at the point of exit, as I had the other samples described. This (indicating) is what is left after the analysis, marked "10:30"—a little earlier than I thought—10.30 November 5, just about an hour before high tide. It is marked in blue pencil "7." It resembled, as far as I could see, samples which I had taken before, except that it was not as dirty as the first sample I took. The first sample seemed to have more dirt. This (indicating) is what is left of the first sample. Those (indicating) are the subsequent ones. I analyzed that. I determined the coal-tar and other matters soluble in chloroform in this, as I did on the previous one, and I have the results here in dish No. 7.

47 There are fifteen parts per million; not quite so much as the others, but practically the same, of all solid matters soluble in chloroform.

This was a favorable day for securing the samples which I desired, namely, as nearly as I could get the surface of the water in the track of effluent, as it flowed into the river. The morning was cool enough to see the steam of the warm water, as it was flowing into the river, and thus enabled me to tell the course of it. Where the steam disappeared I could follow it still further by the iridescent films, the morning being cool, and thus not disturbing its course. I had with me a tape, on which I had tied at intervals of 50 feet a piece of red ribbon or tape. Fastening that at the mouth of the effluent, I followed this course of the warm water, where I could see the steam coming up, disturbing the water just as slightly as possible by the boat, the warm water, of course, remaining on top, the effluent remaining on top by reason of its lower density, being warm. When I got out just 50 feet I dipped off the surface of the water by a dipper repeatedly enough of the surface to fill this bottle, which I now show to you; marked No. 8 in blue pencil. This is as near as I could get the effluent water by dipping it from the surface. That is represented in there. Of course it is very much diluted in going out fifty feet, and is quite different in its character from the effluent itself. I also made an analysis of this. That has 4-8/10 parts of matter soluble in chloroform, per million. This would indicate 4.8

48 gallons in a million gallons.

Now, following the course of this stream outward again, I came to the next 50 feet on my line, that is 100 feet from the effluent, and took sample marked "9," in blue-pencil, which I also show to the court. That is also marked on the label "100 feet from the effluent," and marked "No. 9" in blue-pencil. This was still following the course, though at this distance the steam had just ceased.

I could see no more steam, but I could see these films, as I followed them, and so I knew that I was still in the course of the effluent.

I made the same examination of this sample, and found that it contained four parts per million, instead of $4\frac{8}{10}$ parts, which was in the other.

I now continued the course of the effluent, as nearly as I could, the stream of course being very much diluted and difficult to follow. Continuing in the same direction outward toward the river, however, I came to a distance of 150 feet, where I took the sample marked in blue-pencil "No. 102, and also marked on the label "150 feet from effluent."

I made the same examination of this, and found it to contain $1\frac{4}{10}$ parts per million. I can show you this also in the dish marked No. 10. That is the one you have just looked at (indicating), No. 9. Here is the one you have just looked at (indicating), No. 9. Here is the one I was referring to (indicating). That contains $1\frac{4}{10}$ parts per million of matter soluble in chloroform. It is almost invisible.

49 I continued my journey now for another 50 feet, making a distance of 200 feet, and took the sample marked "11" in blue-pencil, and also marked on the label "200 feet from effluent."

I made the same analysis of this, and found it to have $\frac{8}{10}$ of one part per million; that is, a million gallons would have $\frac{8}{10}$ of one gallon of this matter.

That is at a distance of 200 feet. At that distance there was only $\frac{8}{10}$ of one part per million. This brought me well out of the estuary. That is, I was practically now in the river. You understand this estuary runs up here in a very deep cove, and it takes about 200 feet to get out even with the current or the channel. This brought me well out of the estuary. Still, I went another 50 feet, so as to be sure I was out. I took the sample marked "12" in blue-pencil, and marked on the label "250 feet from effluent" I found there $\frac{2}{10}$ of one part per million, which is practically a vanishing quantity. The refinements of chemistry could not measure less than that, with any degree of precision. That is also marked on this dish here, "No. 12." There it is, and you can see there is a little discoloration in it, but that is the last that chemistry could do. That is practically out into the channel. That is the river water.

You see, then, a gradual running down to an infinitesimal quantity, at a distance of 250 feet.

The COURT. Is that diminution caused by the admixture with the river water, or is it on account of the precipitation of the solid particles that we see going to the bottom of these bottles?

50 A. I could see no solid particles precipitating. This is absolutely in solution. The water has absolutely taken it up, your honor. I do not think that this contains any substances, as it comes fifty feet from the effluent which could be precipitated. It does, however, contain a little of this iridescent film which I tried to get off of the surface all the time, and which does not sink.

The COURT: Is there anything at the mouth of the effluent which would be precipitated in that way?

The WITNESS: I examined that at low tide, and testified about it to your honor the other day. I could see it at low tide, and saw a number of splotches of coal-tar deposited on the mud, in the mouth of the effluent.

The COURT: But you do not think it would go out into the river?

The WITNESS: I do not believe it would, sir. As I say, I was trying to trace the current into the river, and I gave it up at 250 feet, because I found that as far as chemistry could say, you could measure nothing less than that obtained at that distance. It might vary in the weight of the dish, according to whether it was a moist day or a dry day when the dish was weighed. I made efforts, however, to weigh the dish perfectly dry, right out of the dessic-ator in each case, so as to avoid that accident.

As I have stated, the samples showed a progressive diminution from the effluent, which contained 15 parts per million; at 50 feet distant, 4-8/10 parts per million; at 100 feet distant, 4 parts per million; at 150 feet distant, 1-4/10 parts per million; at 200 feet distant, 8-10 of one part per million, and at 250 feet distant, 2-10 of one part per million.

I next went to the Anacostia bridge, about half way between the mouth of the effluent and the navy yard, and some little distance below the mouth of the big sewer, four or five hundred feet below it, to see the effect of the emptying of the big sewer upon the water there.

Q. By the big sewer, you mean the sewer we have been talking about, the Twelfth Street sewer?

A. Yes sir, the Twelfth Street sewer. I there took sample marked No. 13. This sample is in a green glass bottle, so that you cannot tell about the colors as in the others, which were in white glass bottles. This sample was taken at the bridge, about a third of the way over, that is, right near the draw—that will locate it better. You know where the draw is?

The COURT: The deepest part of the Eastern branch?

The WITNESS: Yes sir, just above the draw and just beyond and below the big sewer. I there took another sample, and found that that contained 2-8-10 parts per million of matter soluble in chloroform, 15 times as much as my last sample at the end of the effluent contained. That is, as a result of the contamination of the sewer, the matter soluble in chloroform was increased 15 times over what it was in my last sample, at 250 feet straight out from the mouth of the effluent. This I have also here. This residue is in dish No.

13.

52 I now went to the navy yard in a boat, and went right to the place where the fire was, and took a sample of the water directly from near those piers, which sample I marked "14."

The COURT: That was in the river, not in a dock?

A. Right near the dock.

The COURT: But it was in the river?

The WITNESS: Yes sir, in the river. I made the same examination of that, and found that it contained 3 8-10 parts per million—more than was present at the bridge.

By Mr. PERRY:

Q. I want to have this definite. Look at this map here, and you will see where the fire took place.

The WITNESS: These examinations showed that the effluent practically disappeared at 250 feet, in any influence upon the water, while the contamination reappeared at the distance of a thousand or two thousand feet below the mouth of the effluent, that is, below where this sample was taken.

Q. What did that show?

A. That there was a contamination, probably, of grease.

Q. From what?

A. From different sources. Most of it was from the sewer, and from the navy yard waste. There were two battle-ships, or rather, two yachts there, throwing out the residue of their kitchens, forming great splotches of grease over the surface of the water where I
53 took this navy yard sample, and that doubtless came from that contamination; but it was 15 times as great as the contamination at 250 feet from the sewer. Now, this ended my examination of the samples.

The 18 gallons of matter soluble in chloroform, the 18 gallons of coal tar that I spoke of, contains everything soluble in chloroform—that would include coal-tar, grease, and other things. The solid matter that I speak of was in solution. I have no evidence that it ever comes out of the solution. The 18 gallons of solid matter which I speak of is material that is carried either in solution in the water, or in a state of mechanical subdivision equivalent to solution—a fineness of subdivision which is imperceptible to the eye, and which produces no precipitate on standing.

The iridescent films I spoke of come from grease upon the surface of the water. One drop of grease will cover a very large surface of water. All of the oily matter that I refer to is soluble in chloroform, so that I got it all. I got both the oil and the solid coal-tar, and the 18 parts per million that I spoke of contains, as I have repeatedly said, oil, grease, coal-tar, and all other matters soluble in chloroform.”

54 And further the said witness Wiley testified as follows:

That the Twelfth Street sewer empties into the river about one hundred yards from the eastern works of the Washington Gas-light Company; that the tar in the water of the gas-works tends to purify the water of the river, and is an antiseptic for the sewer water; that it would be a good thing if one thousand times more water from the gas works ran into the river.

And next counsel for the accused asked the witness the following question:

“Q. Now, I will ask you whether or not you could have any establishment in this District using machinery, and, as we all know,

oil being used to keep the machinery in lubricated condition, without a discharge of that sort (oily films) if any of it got into the sewer?"

To the asking of which question counsel for the United States objected, and the court sustained the said objection; to which ruling of the court the accused then and there excepted, and the judge entered the said exception on his minutes.

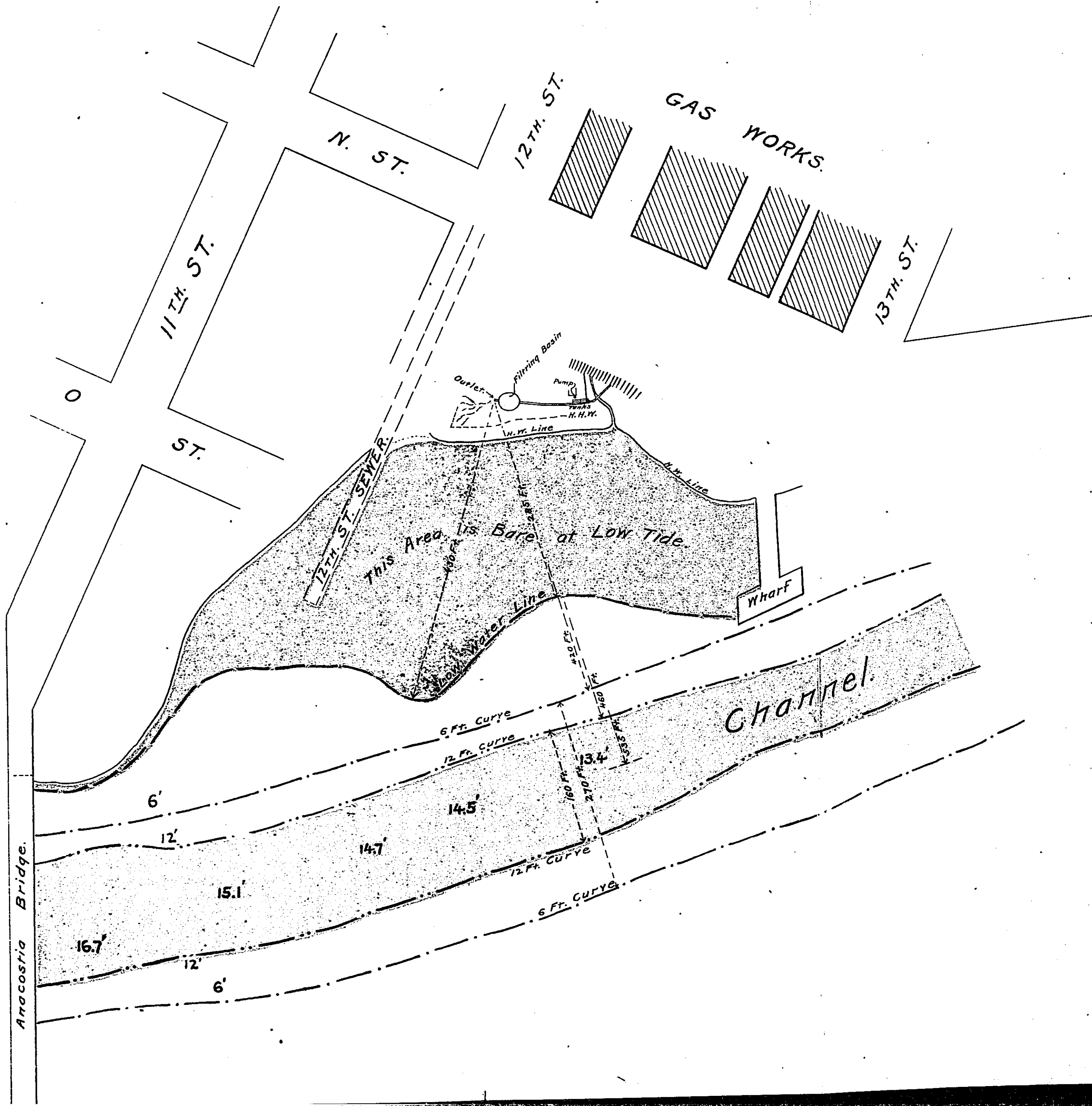
Whereupon counsel for the accused stated to the court that his next preceding offer of proof by the said witness Wiley is that it would be absolutely impossible, under a literal interpretation of the statute in question, to use machinery or oil in the District of Columbia, save under conditions which would be a denial of the use.

And further the said witness testified that he has thousands of times seen iridescent films of oil on the streets of the District of Columbia; that it comes from drippings of oil, the droppings of horses, oil used in automobiles, street cars and other things; that after every rain-storm iridescent films can be found in great abundance everywhere on the streets of the city; that from these causes sewage collected in the District of Columbia would produce an iridescence on the water at the point where it discharges.

And further the accused gave in evidence the testimony of Professor Charles E. Monroe and of Dr. Henry W. Wylie, that the process employed by the witness John D. Hird in the analysis of specimens of refuse water as testified to by him is inaccurate and without value.

And next the accused, to maintain the issues on his part joined, gave in evidence the testimony of WILLIAM H. BENTON, who testified that he is a civil engineer, and has been engaged for about 18 years in that profession; that he has had experience as surveying engineer, both in private work, and in United States Government works, almost all of that time; that he was with the United States Army Engineers for two years and a half in Philadelphia; that he was in the United States Coast Survey for about six years; that he was with the United States Geological Survey for some time, and with the Isthmian Canal Commission for a short time; and that he has been in private practice for about five years.

That during his experience he has been with landscape, civil and topographical engineers. That he has had charge of constructions for the United States Fish Commission for six years, in different parts of the United States, and also at their offices in Washington; also in the office of the architect and engineer of the Fish Commission. That he has prepared a plat which is given in evidence, marked "W. H. B. No. 1," which shows the gas works in question, the situation of the filtering basin, and also the Twelfth Street sewer. Also of the Anacostia bridge, and the channel of the Anacostia river from above the gas works down to the said bridge. That the measurements upon the said plat are correct as they are given.



And the witness testified that he had estimated the flow of the Anacostia river or Eastern branch, as follows:

I have here, sir, some tabulated figures of the volumes of flow of what might be called the Anacostia river, because of the fact that it takes the tributaries of the river and the sewers above the Navy Yard bridge, near where the gas works are located. I have measured

(Here follows drawing W. H. B. No. 1, p. 57.)

58 the Eastern branch proper at Hyattsville. I measured the Northwest branch, which enters the Eastern branch between Hyattsville and Bladensburg. I measured them both just above their confluence. Then I measured the mill-race at Bladensburg. I will give you the volumes of those separately.

The Eastern branch, proper, was 35,650 gallons per minute. The Northwest branch was 21,258 per minute. The mill-race at Bladensburg was 2,700 gallons per minute. The total of the three just mentioned is 59,608 gallons, or 7,968 cubic feet per minute.

I have them also by the hour and in 24 hours, in cubic feet and gallons, if you would like that.

Q. Perhaps you might as — give them, as long as long as you have made some calculations elsewhere by the hour.

A. Those three streams, combined, flow 3,576,480 gallons per hour. Converted into cubic feet, that makes 478,106 per hour. In 24 hours those three tributaries flow 85,835,518 gallons. Converted into cubic feet, it makes 11,474,539 cubic feet. That shows the amount of fresh water.

Then as to sewage, I have measured the Florida Avenue sewer, which empties into the Eastern branch south of Bennings bridge, a mile or so above the gas works. The volume—it might be rather laborious, your honor, to take those through minutes and gallons.

Q. Well, just give it per hour?

59 A. I have made some comparisons in 24 hours. The Florida Avenue sewer is 608,040 gallons per hour.

Then there is a sewer at Twelfth street, right at the gas works, hardly 100 feet from this point where this water enters into the branch, your honor. That flow is 90,927 cubic feet per hour. The combined flow of those two sewers in an hour is 680,184 gallons. The Florida Avenue sewer is 608,040 gallons per hour, and the Twelfth Street sewer is 72,120 gallons per hour.

I have figured the total amount of fresh water and sewage combined, by the hour; in gallons per hour it is 4,256,664 gallons per hour. That is the total flow of everything; but that does not consider the tidal volumes.

Q. Now, is there any other element in determining the volume of water into which this water from the gas works empties?

A. Yes sir; the tidal effect is very great there. Each flood tide brings an enormous volume into the river. There are two flood tides per day. These surveys and figures as to the tidal volume were not complete at the Navy Yard bridge, but were quite complete at a point directly opposite the arsenal.

The tide water goes to Bladensburg, which is far beyond the District line. If you will notice, these areas are all covered by water (indicating); and a very much larger part of the tidal volumes that I am going to speak of come from above the Navy Yard bridge than the space below it. It is very hard to figure that; but you can see from the area to some extent what the proportion would be.

60 Here is this Eastern Branch marsh; that is covered all the way down. Of course this is covered all the way over, too

(indicating). But it is a matter which it is almost impossible to figure, or I should have figured it. I have done as much with figures as can be done in the case.

61 I have here the figures from which I have calculated the tidal volumes. There are different cross-sections, different depths, and so forth, and at different points in the channel. Those are very complete, as far as this one cross-section is concerned. I took the cross section right through here, where these observations were made, and that is the point where this effluent water enters the river.

The quantity of water which passes daily into the Anacostia river from two flood tides is equal to 130,521,368 cubic feet, which is 978,910,260 gallons. This is the water which goes into the Eastern branch as the result of two flood tides per day of 24 hours. Of this amount fully one-half passes the gas works.

The computations I have made do not include the rain-fall. I have made a further computation, as follows: Taking as a basis the amount of 900 gallons per hour, that would equal 21,600 gallons in 24 hours, or 2,887 cubic feet in 24 hours, of water, from the gas works. Taking 18 parts in a million of solid matter, we would have in 24 hours solid matter equal to $5/100$ of a cubic foot, or a cube $4\frac{1}{2}$ inches on each side. That is, in a day of 24 hours, it would be equal to a cube the sides of which would be as large as the paper I have here, $4\frac{1}{2}$ inches square.

The proportion of water from the filtering basin to the fresh water and sewage which passes into the Anacostia river above the Navy Yard bridge about the gas works is as one part in 4,730. Or, for illustration, using a cross-section of a width equal to Pennsylvania avenue, or 160 feet, and 10 feet deep, the water from the gas
62 works would extend in such a section only 1.8 feet, and the water and sewage mentioned would extend 1.6 miles, or as far as from the Peace monument to a point beyond the White House.

As to the solid matter said by you to pass from the gas works, being 18 parts to each million parts of water that comes from the gas works, the proportion to the fresh water and sewage only that comes from above the Navy Yard bridge would be as one part to 262,802,621, or is equal to the volume of the cube I have just referred to.

I have been familiar with the water of the Eastern branch for years, having swam in it often when a boy. During all that time the water from the navy yard up to Bennings bridge, was very impure indeed, and in some parts very offensive to the nose. I refer to the water as distinguished from that emptying in at the gas works. The water was particularly foul anywhere in the neighborhood of the Eastern Branch flats, where the influence of the Florida Avenue sewer was felt. This water was mixed with all sorts of floating impurities. It was most horrible, bluish and dirty—filth of all kinds. I went up near the mouth of the sewer at one time, and I found that we had to go back, far out, it was so very offen-

sive—away back in the stream, on the flats it is very bad. The odor is awful, back on the flats, I should say half a mile from the mouth of the sewer.

As it gets down towards the Navy Yard bridge it is less impure, and undoubtedly is mixed with fresher water all the time; but I should not like to drink it. I should not like to put my hands in water that is as bad as that is.

63 There is a thin fringe of marsh almost all the way along the Eastern branch, and mud, bare mud, here and there at low water, and some vegetation. Between high and low water the land is covered with impurities, rotting vegetation, and other material, and is left by the high tide between high and low water.

I have marked on the plat in green the area bare at low tide, right in front of the gas works. The channel is marked in red. This plat is on a scale of 100 feet to an inch."

And further to maintain the issues on his part joined, the accused offered in evidence his own testimony to the effect that he had often seen boys go along the shore near the gas works, where the water from this filtering basin empties into the Anacostia river, and have dip nets and dip up minnows and sell them to fishermen for bait.

And further to maintain the issues on his part joined, the accused offered in evidence the testimony of PATRICK RYAN, to the effect that he had observed people fishing opposite the outlet of the gas works all the time, every day, and catching fish.

And further, that the beach along by the gas works is a regular bathing beach in the summer time; that he has seen fish in the water, and that he has seen them caught out of the water with a fishing line.

And further the testimony of the witness, Professor CHARLES E. MUNROE, to the effect that he has noticed in the water discharging from the sewer, little minnows feeding there, as the refuse matter came out, and that he has seen them feeding and swimming
64 there.

And further the testimony of Professor HARVEY W. WILEY, to the effect that in October, 1902, he saw two men fishing from the pier of the gas works; that there were quite a number of small fish floating in the water, floating underneath and jumping up above the surface; and that this was right in front of the gas works, right beside the exit of the effluent. There were quite a large number of small fish.

And further the testimony of the witness JOHN F. LUCKETT, who says that his business is that of a fisherman, that he has been in it about forty-five years, since he was old enough to get into a boat, that he is an expert in fish culture, and was in the United States Fish Commission for twelve years; that he is familiar with the situation around the gas works in question, and has fished there fre-

quently, up to August, 1902; that there has not been a particle of change from that time to the present in the situation upon the premises in question. That up in front of the gas works is a favorite place for fishing, up above the Anacostia bridge, that it seems to be an extraordinarily good location for fish, because there is a bend in the channel there, and it throws the fish right in by the gas works all the time, numbers of them, and they always took it as a favorite place when they could get it.

65 "We did that because we could catch more fish there opposite the gas works than anywhere else in the Eastern branch. We would catch bass, yellow perch, catfish, silver fish, gold fish, and all classes of fish that inhabit fresh water.

I never noticed any fish that were killed near the gas works, any more than I would anywhere else in the fresh water of the Potomac. Fish die in the delicate season, in the spring, in the months of April and May, from what is called the fungus, and the leeches that come in the grass. In the spring the grass sprouts right out from the bottom, and there is a little leech that comes out about as big as a pin-head; and these fish, in spawning, go over in the grass to deposit the eggs, and while they deposit the eggs they gather these leeches in the gills, and they choke them to death, and they die. Thousands of them float about the river every year. The gas works have not anything to do with it at all. Gas-tar and turpentine will purify any water that there is. We use it altogether in the tanks of the Fish Commission, to purify the water.

I know the cove where the gas works' water empties. The condition of that is pretty fair in regard to there being nothing detrimental from the gas works. There is a sewer that empties there, and we all know there is an alkali that comes from a sewer that kills grass, and it kills it there the same as it does by the James Creek canal, where that empties—the same condition. Any sewer that empties will kill grass; it is simply the alkali."

And further, the witness Dr. HARVEY W. WILEY said that while the water discharged from the filtering basin would itself be detrimental to fish, and he did not believe fish could live therein, 66 its mixture with river water would probably be beneficial, even to the fish; that at a distance of fifty feet, the sample which he had taken by scooping off from the top of the water might harm fish in that little estuary, because it is very narrow there and very concentrated, and he took the water right from the surface so that he got mostly effluent water; that in other words he fished up that warm water; scooped it up. The water was still warm. That he took the sample purposely from the top so as to get the effluent water. But that at a distance of 100 feet from it, it would certainly not be harmful to them.

67 And thereupon the Government asked the court to grant the following instruction:

"If the court believes from the evidence that the defendant Holden,

as superintendent of the Washington Gas-light Company, doing business in said District, allowed, on the fifteenth day of October, 1902, a certain waste product of said gas-light company and gas-works, consisting of a certain percentage of tar and oil of said gas-works, to flow with water into the Anacostia river, a tributary of the Potomac river in said District, then its judgment should be that of guilty."

And the accused, by his counsel, objected to the granting of the said prayer, on the ground that the said prayer literally interpreted the provisions of section 901 of the Code of Law for the District of Columbia, and assumed that any discharge of refuse water containing any percentage of tar and oil into the water of the Potomac river or its tributaries was prohibited by the said act. But the court overruled the said objection and granted the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next the accused, by his counsel, prayed the court to grant the following prayer:

"Upon the whole evidence the court should acquit the defendant."

But the counsel for the Government objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

68 And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"The fact that the defendant, on the occasion in question, caused water mixed with tar and oil to flow from the works of the Washington Gaslight Company into Anacostia river, if the court shall find such fact from the evidence, is not sufficient to convict the defendant unless the court shall further find from the evidence that the said water so mixed with tar and oil was, after it had mingled with the water of the said river, injurious to fish or to any spawning-ground of fish in said river."

But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"If the court shall find from the evidence that the defendant, on the occasion in question, caused to flow from the works of the Washington Gaslight Company a million gallons of water mixed with not more than eighteen parts in one million of tar and oil at the rate of nine hundred gallons per hour, and that the same flowed into and mixed with the water of the Anacostia river, then the court shall acquit the defendant."

69 But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"If the court shall find from the evidence that the tar and oil which the defendant Holden on the occasion in question allowed to flow into the Anacostia river from the works of the Washington Gaslight Company was in a state of complete solution with the water with which it was mixed, and would not become dissolved from the said water unless treated chemically, then the court should acquit the defendant."

But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"If the court shall find from the evidence that on the occasion in question the defendant caused to flow from the works of the Washington Gaslight Company into the Anacostia river water
70 mixed with tar and oil, which water so mixed consisted of one million parts of water to not more than eighteen parts of tar and oil, then it shall acquit the defendant."

But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"The provisions of section 901 of the Code of Law for the District of Columbia must be construed in connection with the provisions of sections numbered 896, 897, 898, 899, 900, 902 and 903 of the said code; and in order to convict the defendant of a violation of the said section 901 the court must find from the evidence beyond a reasonable doubt that on the occasion in question the defendant allowed to flow into the Eastern branch of the Potomac river, as waste product of the gas works of the Washington Gaslight Company, water mixed with tar and oil in such proportions as to be injurious to fish or to a spawning-ground of fish in said river after said water so mixed with tar and oil had mingled with the waters of the said river."

But the Government, by its counsel, objected to the granting of

the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

71 And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"The provisions of section 901 of the Code of Law for the District of Columbia must receive a reasonable construction; and the court should acquit the defendant if, on the occasion in question, he discharged into the Anacostia river as waste product of said gas works water mixed with tar and oil in such proportions as were so minute as not to substantially befoul the waters of the said river."

But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"If the court shall find from the evidence that the defendant has used, in the conduct of the gas works in question and on the occasion in question, all reasonable diligence in eliminating the waste products of tar and oil, and that upon said occasion he only discharged into the said Anacostia river so much tar and oil mixed with water as could not by reasonable diligence and by the use of reasonable processes be eliminated from such water, then the court should acquit the defendant."

72 But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"If the court shall find from the evidence that the defendant, on the occasion in question, discharged into the water of the Anacostia river refuse water from the said gas works at the rate of nine hundred gallons per hour, said water containing in solution not more than eighteen parts of tar and oil to every million parts of water, then the court should acquit the defendant."

But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the

accused, by his counsel, prayed the court to grant the following prayer:

"The provisions of section 901 of the Code of Law for the District of Columbia do not apply to the necessary operation of the Washington Gaslight Company in manufacturing gas in the said District and in discharging the refuse of the said manufacture, and the court should therefore acquit the defendant"

73 But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"If the court shall find from the evidence that the defendant, on the occasion in question, discharged into the Anacostia river only so much refuse water mixed with tar and oil as is required to be so discharged by the necessary operation of the Washington Gaslight Company in manufacturing gas, the court shall acquit the defendant."

But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

And next, and as an entirely different and separate prayer, the accused, by his counsel, prayed the court to grant the following prayer:

"If the court find from the evidence in this case that the defendant Holden allowed, on the occasion in question, to flow from the works of the Washington Gaslight Company a million gallons of water mixed with not more than eighteen parts in one million
74 of tar and oil at the rate of nine hundred gallons per hour, and that the same flowed into and mixed with the water of the Anacostia river, and that the said water, so mixed with tar and oil, was not, after it had mingled with the water of the said river, injurious to fish or to any spawning-ground of fish in said river, and that the defendant has used, in the conduct of the gas-works in question and on the occasion in question, all reasonable diligence in eliminating the waste products of oil and tar from the said water, and that upon said occasion he only discharged into said Anacostia river so much tar and oil mixed with water as could not by reasonable diligence and by the use of reasonable processes be eliminated from such water, then the court should acquit the defendant."

But the Government, by its counsel, objected to the granting of the said prayer, and the court sustained the said objection and refused to give the said prayer; to which action of the court the accused, by his counsel, then and there excepted, and the court entered the said exception upon its minutes.

The accused, in connection with and at the time of each exception

by him taken to the rulings of the court in the case set out in the aforesaid bill of exceptions, gave notice of his intention to apply for a writ of error, and each of his said exceptions, together with his several notices of intention to apply for a writ of error, were duly noted upon the minutes of the court.

And next thereupon, and before the court had pronounced its finding of fact in the premises, the accused, by his counsel, prayed the court to sign and seal this his bill of exceptions, which
75 is accordingly done, this fifteenth day of May, 1903, which is the same day upon which the court granted, as aforesaid, the prayer of the Government, and rejected, as aforesaid, each and all of the prayers of the defendant; and each and every other exception hereby is allowed as of this day.

Whereupon, and after the taking of the afore-mentioned exceptions, and the noting of the same by the justice holding the said police court upon his minutes, the court found the defendant guilty.

(Signed)

I. G. KIMBALL, [SEAL.]
Judge Police Court, D. C.

76 Filed May 19, 1903. Joseph Y. Potts, Clerk Police Court, D. C.

In the Police Court of the District of Columbia.

THE UNITED STATES }
vs. } No. 127,217.
THOMAS F. HOLDEN. }

Opinion by Mr. Justice Kimball.

WASHINGTON, D. C.,
FRIDAY, May 15, 1903—11 o'clock a. m.

The COURT: Gentlemen, I have not been able, in this case, to write out an opinion. With my manifold duties it is impossible for me to do more, in a case even of this importance, than to carefully examine and consider it, and then, to the best of my ability, state my conclusions orally; and that is what I have been compelled to do in this case.

I have given a good deal of thought to the case, not only because it has taken so much time in its trial, but because it is an important case, and because of the fact that I had once had it under consideration, and had come to a conclusion then which I was compelled to re-examine in the trial of this case, although the facts are a little different from what they were then and I have, from that re-examination and from the law, been compelled to change the views that I had when I commenced the trial.

77 The law as it stands in the code is the end of a succession of laws upon the same general subject. The first act that we have, or the first act that has been called to my attention, is the act of April 6th, 1880, found in 21 Statutes, page 71. This is an

act, according to the title, "for the protection of the Potomac fisheries of the District of Columbia, and for the preservation of shad and herring in the Potomac."

This act makes a closed season, but does not make a totally closed year. It closes the river to the use of these different sorts of nets from the 30th day of April in each year to the end of the year; but it leaves the rest of the year, from the first day of January to the 30th day of April, an open season, in which fishermen could use these nets, which were afterwards prohibited by the laws subsequently enacted.

There is no provision in this act against the waste products of these manufactories being allowed to run into the Potomac; and there is, as you notice, no reference to spawning-grounds. The act itself provides for the protection of fishing, the Potomac fisheries, in the District of Columbia.

The next act that takes up this subject was passed five years afterwards, on the second day of March, 1885. It is found in 23rd Statutes, at page 340. This is an act to protect the fish in the Potomac river in the District of Columbia, and to provide a spawning-ground for shad and herring in the said Potomac. It provides for a closed season for five years against all fishing by nets and by other contrivances; and it has in it, for the first time, a provision against the allowing of tar, oil, ammoniacal liquors and other waste products of any gas-works, etc., to flow into the Potomac river or its tributaries.

78 A noticeable point in section 3 of this act is that this portion of it is not to take effect until three months after the passage of the act; it evidently being the intention of the law-makers to give time to those who were then allowing these waste products of these manufactories to run into the Potomac to change their methods so as not to allow them to run into the Potomac. This act was to continue for five years, commencing with the second of March, 1885.

The third act was not passed until nine years afterwards. The act I have just read was for five years; and for four years there had been no law upon the subject. But in 1894, on the 12th day of March, (to be found in 28th Statutes, at page 40) the law is re-enacted, as "An act to continue in force the provisions of the act approved March 2nd, 1885, entitled, 'An act to protect the fish of the Potomac river in the District of Columbia, and to provide a spawning-ground for shad and herring in the said Potomac river.'"

This provides for the continuance of this law in force for ten years from the time of its passage. There seems to have been some reason why, after the lapse of four years since the limitation provided in the previous act, Congress thought in its wisdom, that the law should be re-enacted, and re-enacted it; and in this it also re-enacted the provision against the allowing of these various tars, oils and ammoniacal liquors to flow into the Potomac and into its tributaries.

The language in each of the two acts with regard to such substances is very broad; and this act of 1894 uses the same language

79 that had been in force in the act of 1885, to wit, "any waste product," covering it by the very broadest language possible.

Before the ten years provided for in this act had expired Congress again passed an act using almost, if not quite, the identical language that was used in the previous act, in section 3, but enlarging the scope of the fish law. They must have, in their wisdom, concluded that for some reason it was not broad enough; and they enlarged the scope of the law, putting in sections which had not been covered by either of the previous acts. But in that law they re-enacted, with the same broad language that they had used in the previous one, in section 6, this provision with regard to tar, oil and ammoniacal liquor—"that no person shall allow any tar, oil, ammoniacal liquor or other waste products of any gasworks or works engaged in using such products, or any waste product whatever," etc. That is to say, they used the same broad language that had been used in the two previous laws with regard to this depositing of these substances in the Potomac river.

The Code takes these six sections of this act of 1898 bodily into its terms, and re-enacts them. So that we have here a succession of four acts applying to the subject-matter of this controversy, in each of which four acts almost the same identical words are used, the same breadth of description and it is now the law of the District of Columbia. In the determination as to the meaning of this law, and the purpose of Congress in these enactments, there is a very significant fact to be considered, and that is that this language is
80 first used where Congress makes an enactment in which they refer to spawning-grounds; and in each act thereafter (except in the code) reference is made to spawning-grounds in the title to the act.

Now, in this case it is conceded that some tar and oil does run from the gas-works on the Eastern branch into the Eastern branch, one of the tributaries of the Potomac river; and I am asked by the Government to allow this prayer;

"If the court believes from the evidence that the defendant Holden, as superintendent of the Washington Gas-light Company, doing business in said District, allowed, on the fifteenth day of October, 1902, a certain waste product of said gas-light company and gas-works, consisting of a certain percentage of tar and oil of said gas-works, to flow with water into the Anacostia river, a tributary of the Potomac river in said District, then its judgment should be that of guilty."

In that prayer there is no statement as to the quantity thus allowed to be deposited in the Potomac river; but the prayer is that if any quantity is allowed to flow into the river, then the judgment of the court must be "guilty."

The defendant has submitted several prayers, the second being as follows:

"The fact that the defendant, on the occasion in question, caused water mixed with tar and oil to flow from the works of the Wash-

ington Gas-light Company into the Anacostia river, if the court shall find such fact from the evidence, is not sufficient to convict the defendant, unless the court shall further find from the evidence that the said water so mixed with tar and oil was, after it had
81 mingled with the water of the said river, injurious to fish or to any spawning-ground of fish in said river."

Now, it is true, and cannot be questioned, that the purpose Congress had in these various enactments, including that in the Code, was the protection of fish, and, in the three previous acts, the protection of spawning-grounds for fish. But Congress, in this section of the Code in question, section 901, says:

"No person shall allow any tar, oil, ammoniacal liquor or other waste product of any gas-works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing or refining establishment to flow into or be deposited in Rock creek or the Potomac river or any of its tributaries within the District of Columbia, or in any pipe or conduit leading to the same."

If I take that language according to its terms, according to the usual signification of the words used, this prayer must be refused; and the prayer of the United States must be granted. The question comes, then, whether under that language I have the right to construe that statute in such a way as to put into it words which are not in the section as read, or to put in words of limitation which are not in the language itself?

The third prayer is also upon that hypothesis:

"If the court shall find from the evidence that the defendant, on the occasion in question, caused to flow from the works of the Washington Gas-light Company a million gallons of water mixed with
82 not more than eighteen parts in one million of tar and oil, at the rate of nine hundred gallons per hour, and that the same flowed into and mixed with the water of the Anacostia river, then the court shall acquit the defendant.

The fourth prayer:

"If the court shall find from the evidence that the tar and oil which the defendant Holden on the occasion in question allowed to flow into the said Anacostia river from the works of the Washington Gas-light Company was in a state of complete solution with the water with which it was mixed, and would not become dissolved from the said water unless treated chemically, then the court should acquit the defendant."

Each of those prayers requires me to read into the law a limitation. One limitation is, "if it is not injurious to fish." Another limitation is that this should not apply if it was in solution. And the question in my mind is, under the authorities, have I the right to do that?

If a law by its terms is not clear, if the words require construction, if the law requires to be construed by the court, then the court has the right to find out the meaning by extraneous facts, where the

purpose and intent of the lawmakers is evidenced from other facts as well as those in the law.

I want to refer to some authorities upon the question of my own right to read into the act words of limitation not in the law itself. I will first refer to a case decided in our own court, a case found in 1st Appeals, page 1—the Bush case. The court in that case says:

83 “While it is not within the judicial power, by construction, to cure defects which may render laws unjust or even oppressive, if they clearly exist; yet no statute should be so construed as to render it unreasonable or unjust in its operation, if there be room for construction at all.”

It seems to me clear, from the reading of this section 904 of the Code, that there is no room for construction. The words are clear, explicit, direct. It is not a case where the meaning of the words needs to be considered to properly understand the law.

I will also refer to another case from the same court—the case of *Einstein vs. Sawhill*, 2nd Appeals, 10. This was a patent case:

“There is no better criterion wherewith to ascertain the meaning of terms used in a statute than the statute itself, or other previous or similar statutes in which the same legislative body has given expression to its purpose.”

It was for that purpose that I read these various acts leading down to the one that is now in the Code.

I will also read a case from the 3rd Court of Appeals Reports. This is the case of *Drawbaugh*, also a patent appeal case:

“Considered without regard to previous legislation upon the subject and the decisions thereunder, the words of section 24 seem to afford no room whatever for construction. Their plain import is the creation of a limitation of two years within which a patent for an invention must be applied for after it has gone into public use. We are asked on behalf of appellant to ‘read into’ the statute the qualifying words ‘with his knowledge or consent.’”

84 In this case I am asked to read into the statute the words “provided it is injurious to fish.”

And to give it effect as if these words had been added by Congress in the enactment thereof. “We hold it to be a sound rule that where the words of an act, or part of an act, are plain and clear, and not inconsistent with the general object, and lead to no absurd result, the courts have no right to refuse their operation, or to limit their effect, by a construction based upon conjecture.”

The purpose that Congress had is clear, as shown in the previous legislation. It was to protect fish in the Potomac, and to provide a spawning ground. Congress, by its several enactments, one after the other, in the broadest words used the same terms; and it is to be concluded that Congress, in using those terms in act after act, intended that they should be used in their ordinary signification, without limitation; and it was for Congress to determine whether any ammoniacal liquor or tar or oil was injurious to fish or not. Congress had said that it should not be allowed to flow into the Potomac or its tributaries; and the words are plain. I cannot put into them,

I do not think I have the right to put into them, the words "provided it is injurious to fish." Congress said "None shall be allowed to go into the Potomac or its tributaries;" and Congress has said it several times, reenacting it again and again, and, as the court says in the case just quoted from, I have no power in such a case to add words to the statute for the purpose of putting in a construction based upon conjecture of what Congress intended.

Now, there is a case going back as far as 2nd Peters, the case of *Gardner vs. Collins*, which bears upon this question:

85 "It is not for courts of justice to indulge in any latitude of construction, where the words do not naturally justify it; and there is no express legislative intention to guide them."

This was by Justice Story:

In *Sutherland on Statutory Construction*, I want to refer to several sections.

Section 234:

"If a statute is valid, it is to have effect according to the purpose and intent of the law-maker. The intent is the vital part, the essence of the law. This is the intention embodied and expressed in the statute. A legislative intention to be efficient as law must be set forth in a statute; it is therefore a written law. How the intention is to be ascertained is only answered by the principles and rules of exposition. If a statute is plain, certain and unambiguous, so that no doubt arises from its own terms as to its scope and meaning, a bare reading suffices; then interpretation is needless. And where the intention of a statute has been ascertained by the application of the rules of interpretation, they have served their purpose, for all such rules are intended to reach that intent.

"The sole authority of the legislature to make laws is the foundation of the principle that courts of justice are bound to give effect to its intention. When it is plain and palpable they must follow it explicitly. The rules of construction with which the books abound apply only where the words used are of doubtful import; they are only so many lights to assist the courts in arriving with
86 more accuracy at the true interpretation of the intention."

So, in section 235:

"It is the intent of the law that is to be ascertained; and the courts do not substitute their views of what is just or expedient. Courts are not at liberty to speculate upon the intentions of the legislature where the words are clear, and to construe an act upon their own notions of what ought to have been enacted. The wisdom of a statute is not a judicial question."

The wisdom of this law is not for me to determine. I might have considered it unwise to pass such an act; but as a judge I have no right to construe it according to my own wisdom. It is the intention of Congress that must guide me; and that intention must be carried out. Where words are clear, where their meaning cannot be questioned or doubted, then it is my duty, even if I thought it was unwise, to carry out that intention as thus expressed.

In section 237 the same doctrine is laid down :

"It is, beyond question, the duty of courts in construing statutes to give effect to the intent of the law-making power, and seek for that intent in every legitimate way * * * , but first of all in the words and language employed ; and if the words are free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation."

Now, there is a good deal more in this same authority that I might read, but it is not necessary. The language here is
87 clear. They have repeated it over and over again, showing that they intended to use the language which they have used in the Code ; because this is only a repetition of several acts using the same language by the same law-makers.

In 23rd Wallace, 374 (a revenue case), it was said :

"A thing may be within the letter of a statute and not within its meaning, and within its meaning though not within its letter. The intention of the law-maker is the law."

So in 16th Wall-ce, 153 :

"All general terms in statutes should be limited in their application so as not to tend to injustice, oppression, or any unconstitutional operation, if that be possible. It will be presumed that exceptions were intended which would avoid results of that nature."

I am going to refer in a moment or two to these other cases which are claimed by the defence—especially the Trinity Church case—to come within the rule that the courts had the right, in interpretation, to do what is asked of the court in this case.

7th Wallace, 482 :

"All laws should receive a reasonable construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

Now, there is no question that the courts have done that in the Trinity Church case. They have said that it is clear from
88 all the circumstances surrounding the passage of the law which was to be construed by the court in that case, that such persons as this clergyman were not intended to be within the meaning of the law. But they did not, in that case, read into the law what was not contained in it, as is asked to be done in this case. That is the difference between the Trinity Church case, that is the difference between the mail-carrier case, and the case at bar. In these two cases the Supreme Court of the United States said that there were exceptions, and that Congress did not intend that the clergyman in the Trinity Church case should be brought within the labor law ; and they go into it and show with very great force the reasons why, in the nature of things, Congress never had any such

intention; that it was an exception to it. So in the mail-bag case, where the man was arrested for an offense committed against the laws of the State, and the man arresting him was tried for stopping the mails—the Supreme Court said that that was not a case intended to be within the law, but it was outside of the law. But they did not in that case read into the law a provision which it did not contain. If it was claimed here that Congress did not intend this law to apply to gas-works; that they were, in the nature of things and were intended to be exempt from the operation of the law, then these cases would apply. If it was claimed that a certain line of business could not, in the nature of things, have been intended to be within the provisions of that law, and that all of that was outside of the law, then these cases would apply. But that is not claimed. It is claimed that the gas-works are under the law; but I am asked to read into
89 the law a provision that if they do not put in enough of this tar and oil to affect fish, they are not punishable for violation of it. It is admitted that they come under the law, but it is attempted to read into the law a limitation not in it. And that is the difference between the Trinity Church case, the mail-carrier case and all of these other cases referred to by counsel in their able argument for the defense, and the case at bar. They are exceptions outside of it. Congress did not intend them to come within it. They are not reading into the law limitations which are not in the law, but exceptions; and the decisions of all the courts say that the courts have a right to see whether there may not be an exception.

For instance, in this case if it was attempted under this section of the Code to bring in railroad companies because the oil from their cars dropped on to the roadway and was washed by the rain into the sewers and so carried down into the streams, the argument could well be made that Congress did not intend to cover such things as that, that they were matters excepted from the law, and not intended to be covered by it.

But here I am not asked to do that. I am not asked to say that the gas-works are not within the law. I am not asked to say that Congress did not intend to cover gas-works by the law. But I am asked to say that although the gas-works are covered by the law, they are allowed to put their tar and oil into the river, provided it does not injure fish. That is an entire change of the subject—not
excluding them from the operation of the law, but reading
90 into the law something that is not in there.

I do not need to say anything further, though I might say considerably more upon the same subject. I have examined the authorities with a great deal of care, and there is but one prayer for the defense that I could allow; but I have rejected it, on the ground that the proof in this case does not sustain it. I would not say that an infinitesimal amount that might accidentally go into the water, so infinitesimal that it could not be taken into any consideration whatever was intended to be covered by the Code. I would not want to say that.

The seventh prayer of the defendant is :

"The provisions of section 901 of the Code of Law for the District of Columbia must receive a reasonable construction ; and the court should acquit the defendant if, on the occasion in question, he discharged into the Anacostia river as waste product of said gas-works water mixed with tar and oil in such proportions as were so minute as not to substantially befoul the waters of the said river."

I have marked on that, "Refused because not sustained by the evidence ;" because the evidence of one of the witnesses for the defense showed that fifty feet from the outlet, the amount there would be injurious to fish ; and the evidence shows that at the very points from which the samples were taken by the defense there was an appreciable quantity of this tar and oil. It was not such a minute quantity as is instanced by that prayer.

I have therefore, for that reason, for the reason that it is not sustained by the evidence, had to reject that prayer. I have re-
91 jected all the prayers of the defense, therefore, and sustained the prayer of the Government.

(Counsel for the defendant subsequently submitted the three instructions following, which, after consideration, were rejected by the court ; to each of which several rejections counsel for the defendant noted a separate exception :)

10. The provisions of section 901 of the Code of Law for the District of Columbia do not apply to the necessary operation of the Washington Gas-light Company in manufacturing gas in the said District and in discharging the refuse of the said manufacture, and the court should therefore acquit the defendant.

11. If the court shall find from the evidence that the defendant, on the occasion in question, discharged into the Anacostia river only so much refuse water mixed with tar and oil as is required to be so discharged by the necessary operation of the Washington Gas-light Company in manufacturing gas, the court shall acquit the defendant.

12. If the court find from the evidence in this case that the defendant Holden allowed, on the occasion in question, to flow from the works of the Washington Gas-light Company a million parts of water mixed with not more than eighteen parts in one million of tar and oil at the rate of nine hundred gallons per hour, and that the same flowed into and mixed with the water of the Anacostia river, and that the said water, so mixed with tar and oil, was
92 not, after it had mingled with the water of the said river, injurious to fish or to any spawning-ground of fish in said river, and that the defendant has used, in the conduct of the gas-works in question and on the occasion in question, all reasonable diligence in eliminating the waste products of oil and tar from the said water, and that upon said occasion he only discharged into said Anacostia river so much tar and oil mixed with water as could not by reasonable diligence and by the use of reasonable processes be

eliminated from such water, then the court should acquit the defendant.

(Signed)

I. G. KIMBALL,
Judge Police Court.

93 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

I, Joseph Y. Potts clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 82 inclusive, to be true copies of originals in cause No. 127217 wherein The United States is plaintiff and Thomas F. Holden defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 22' day of May, A. D. 1903.

[Seal of Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

94 Filed May 19, 1903. Joseph Y. Potts, Clerk Police Court, D. C.

UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable I. G. Kimball, judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The United States, plaintiff and Thomas F. Holden defendant a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey,
Seal Court of Appeals, Chief Justice of the said Court of Appeals,
District of Columbia. the 19th day of May, in the year of our
Lord one thousand nine hundred and three.

ROBERT WILLETT,
*Clerk of the Court of Appeals of the
District of Columbia.*

Allowed by

R. H. ALVEY,
*Chief Justice of the Court of Appeals of the
District of Columbia.*

[Endorsed:] Filed May 19 1903 Joseph Y. Potts, clerk, police
court D. C.

Endorsed on cover: District of Columbia police court. No. 1323.
Thomas F. Holden, plaintiff in error, vs. The United States. Court
of Appeals, District of Columbia. Filed May 22, 1903. Robert
Willett, clerk.

